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MARYLAND STATE ADVISORY COUNCIL ON MEDICAL PRIVACY AND CONFIDENTIALITY

Annual Report 2001

Robert Baum, Chairman

STATE OF MARYLAND

Maryland Department of Health and Mental Hygiene
201 W. Preston Street • Baltimore, Maryland 21201
Parris N. Glendening, Governor - Georges C. Benjamin, M.D., Secretary

State Advisory Council on Medical Privacy and Confidentiality
Robert Baum, Esquire, Chairman

February 1, 2002

The Honorable Parris Glendening
Governor
State House
100 State Circle
Annapolis, Maryland 21401

Dear Governor Glendening:

I am pleased to present the attached report on behalf of the State Advisory Committee on Medical Privacy and Confidentiality. This report marks the conclusion of our first year of operation.

The Council was established during the 2000 legislative session to provide the General Assembly with information and recommendations on emerging issues in the confidentiality of medical records and monitor developments in federal law regarding health care information technology, telemedicine, and provider/patient communication. By statute the Council provides for a membership of 29 members representing the medical and legal professions, the state legislative and executive branches, and consumers. Given the diversity of knowledge in this area, this first year has been devoted in large part to educating the council members.

The timing of establishing the Council was fortuitous. In November 2000, the U.S. Department of Health and Human Services (DHHS) issued far-reaching medical privacy rules, as required by the Health Insurance Portability and Accountability Act (HIPAA). The cost to implement these regulations is substantial. Therefore, the Council's most important work this year was to evaluate the potential impact of the new HIPAA regulations on those involved in providing, and those receiving, health care in Maryland. I am pleased to report that the Maryland health care community will be less impacted by HIPAA than most other states, because the State has in the past been a leader in protecting health care information. Nonetheless, the HIPAA regulations will require a significant education program in Maryland, which the Council will explore in 2002.

In 2002 we have an ambitious agenda to advise the legislature on any reconciliation which is necessary for the State to conform with HIPAA requirements, to help institute a statewide education program to assist the medical community to comply with State and Federal privacy laws, to address the issue of patient access to records, including cost and timeliness, and to address other issues for which the legislative or executive branches ask our guidance.

It has been a pleasure for us to serve the State through this Council, and we look forward to a productive 2002.

Respectfully submitted,

Robert L. Baum, Chair
State Advisory Council on
Medical Privacy and Confidentiality

Maryland State Advisory Council on Medical Privacy and Confidentiality

Background

Maryland has been a leader in protecting patient privacy, and it has one of the strongest medical records confidentiality laws in the country. *See,* §§ 4-301 to 4-403 of the Health General Article. Consistent with its concern that the State ensures a high degree of confidentiality for patients, the Legislature created the State Advisory Council on Medical Privacy and Confidentiality during the 2000 Legislative Session. The Advisory Council's purpose and membership is codified at §§ 4-3A-01 to 4-3A-05 of the Health General Article; its legislative history and specific statutory mandate of the Council is set out in Appendix A.

The objective of the Advisory Council is to provide the General Assembly with information and recommendations on emerging issues in the confidentiality of medical records and monitor developments in federal law regarding health care information technology, telemedicine, and provider/patient communication. The Legislature also charged the Advisory Council with the responsibility to disseminate information on, and encourage compliance with, federal standards for privacy of individually identifiable health information and mandated the Council to study:

- The issue of patient or person in interest notification subsequent to: 1) the transfer of records relating to the transfer of ownership of a health care practice; 2) the death, retirement, or change in employment of a health care practitioner; or 3) the sale, dissolution, or bankruptcy of a corporation which has ownership interests or possession of medical records;

- Medical databases and electronic transmission of data in relation to its impact on patient confidentiality; and,

- Emerging provider 'best practices' for supporting patient confidentiality.

The timing of establishing the Council was fortuitous. In November 2000, the U.S. Department of Health and Human Services (DHHS) issued far-reaching medical privacy rules, as required by the Health Insurance Portability and Accountability Act (HIPAA). *See,* 65 Fed. Reg. 82462-82829 (Dec. 28, 2000), *codified at* 45 CFR Parts 160-164. The cost to comply with these regulations nationwide is substantial. DHHS estimates that to implement the new rules, each provider will spend over $3,000, and each hospital over $ 100,000 in 2003; all told, the nation's small businesses will spend $2.4 billion because of the new federal rules. 65 Fed. Reg. 82787-82794. In Maryland, the Department of Health and Mental Hygiene has estimated that it will cost the Department significantly to comply with the rules in FY 2003. Therefore, the Council's most important work this year was to evaluate the new HIPAA regulations and explore their impact on those involved in providing and those receiving health care in Maryland. Our goal was to lead the process of helping the Maryland provider and consumer community understand how HIPAA would impact them, and help establish an orderly process for determining everyone's privacy rights and responsibilities with the new Federal rules and existing State law.

2001 Council Activities

Meetings

The Council first met in January 2001 and has met ten times during the year. Notice of our meetings is published in the Maryland Register and on our website, http://www.dhmh.state.md.us/sacmpc/. Minutes of our meetings are also posted on the website, and all meetings have been open to the public.

During the first meeting it became obvious that the members had vastly different levels of familiarity with medical privacy issues. Some members were steeped in privacy law, while others had no knowledge at all. Accordingly, extensive time was spent educating the Council on fundamental medical privacy issues, as well as reviewing the HIPAA regulations. Several outside and state speakers provided a variety of views on medical privacy in general, and Maryland's law and HIPAA in particular.

Membership/Staffing

Governor Glendening appointed Robert L. Baum, an attorney/mediator and consumer member, to chair the Council. At Mr. Baum's request, Sherod Williams, Ph.D. a psychologist with the Veterans Administration, and in private practice, agreed to serve as vice-chair.

The legislation, which created the Council, was very specific in ensuring that all affected sectors have a voice on the Council. There are 29 members on the Advisory Council, with appointments running from one to four years. (See Appendix B for a list of members, sectors they represent, and their terms.) In addition to members of the legislature and the Secretary of Health and Mental Hygiene, members appointed represent health care professionals and institutions, the insurance industry, advocacy groups and consumers, computer security experts, organized labor, the legal profession, and health regulatory agencies. The Council has received staff support from the Department of Health and Mental Hygiene (DHMH) and legal counsel from the Assistant Attorney General for the DHMH. Neither position is funded through the Council, which has no budget.

Establishment of Committees

The Council has established three standing committees: Communications, Education, and Technology.

Communications Committee

Members: Robert Baum, Chair; Dr. Harry Brandt, Terezie Bohrer, Dr. Timothy Doran, David Roling, Wayne Willoughby

The purpose of the Communications Committee is to respond to inquiries submitted to the Council. The Committee drafts substantive responses to communications, which are then submitted to the Council for approval. This year three letters were received. Two of the letters were nearly identical, and were sent by Delegate Elizabeth Bobo and former delegate (and former Environmental Matters Committee Chair) Ronald Guns. Their letters asked the Council to consider three questions:

1. Whether the patient or the health care provider is the owner of a personal medical record concerning the patient;

2. Who should bear the expense of providing copies of personal medical records; and,

3. Whether the current statutes and regulations adequately ensure timely access to and transfer of personal medical records between providers when a patient is receiving medical services from multiple providers.

At the suggestion of the new chairman of the Environmental Matters Committee, Delegate John Hurson, we responded to him.

In answer to the first question, we concluded that legal ownership of a medical record resides with the health care provider, while the patient has an equitable right of access and control to the information contained in the medical record.

As to the second question, we concluded that:

> When the record is needed because of factors beyond the patient's control (e.g., the employee changes health plans necessitating the employee to change physicians), or the patient is unable to afford the cost of the records, then we have concerns about who should bear the copying costs. Furthermore, we are concerned that even in emergency situations, a health care provider can require payment for copies in advance except when a unit of the state or local government makes an emergency request for child or adult protective services. §4-304(d) of the Health General Article. This emergency exception may be too narrow, although we are not aware of any records being withheld in emergency situations because of lack of advance payment. We intend to review these three issues - non-discretionary changes in health plans, inability to pay for records, and scope of the emergency exception - and will report our findings to you at a later time.

For the third question, the Council stated:

> The Council believes, however, that in an emergency situation, records or information on a patient can be and is provided to multiple providers on a timely basis. None of our members is aware of a situation where records have not been produced in a timely manner in an emergency. The Council tentatively believes that 21 working days or four weeks is an appropriate maximum time in which one provider has to transfer a medical record – upon an appropriate request – to another in a non-emergency situation. This is because records in some instances may be held in storage and requires retrieval by the health care provider. However, we are aware that some hospitals in the State, particularly larger hospitals, have with some frequency not met this schedule. We intend to review this timeline further, and provide our findings at a later date.

We also asked Chairman Hurson to provide us with more details if he was aware of any problems with timely release of medical records, so that we could look into any specific problems. We have not received any further correspondence from the Committee.

We also received correspondence from the Association of Maryland Hospitals and Health Systems asking that we provide guidance on the question of whether HIPAA pre-empts Maryland's

medical privacy laws. We responded by stating that the Council believes that is an important issue, it has been studying that question throughout the year, and will be reporting on that issue shortly.

Appendix C represents copies of correspondence the Council has sent out this year. We welcome additional correspondence from the government and private sectors, and will do our best to address the issues, which are raised.

Education Committee

Members: Dr. Sherod Williams, Chair, Terezie Bohrer, Evan DeRenzo and Pearl Lewis.

The charge given to the Education Committee is:

1. Review various avenues of communication and resources that can be employed for mass communication consumer awareness, as well as mechanisms to ensure the education occurs.
2. Gain an understanding of the efforts to train providers that are being undertaken by licensing boards and professional associations.
3. Gain an understanding of current business practices by "covered entities" in order to learn the impact of the required changes necessary for HIPAA compliance and maximum protection of the privacy and confidentiality of medical records.
4. Explore and recommend regulatory changes necessary to ensure appropriate provider education for medical privacy and confidentiality.

Proposed Actions for the period October 1, 2001 - September 30, 2002:

Identify informational and other resources that can be used to support educational efforts in the State, including:

- Human Resources (experts, speakers and trainers, organizations etc)
- Training Resources (information resources, books, professional and popular articles, internet sites, films, tapes etc.)

Proposed Actions for the period October 1, 2002 - September 30, 2003:

Draft a plan to identify viable strategies for educating health care providers, insurers, patients and other covered entities about the implications of HIPAA regulations, other Federal laws and Maryland laws on the privacy and confidentiality of electronic medical records including:

- Covered entities rights and responsibilities
- Effects of new technology

Develop recommendations that incorporate and identify the role that legislators can play in facilitating the education of providers, patients and other interested parties.

Proposed Actions for the period October 1, 2003 - September 30, 2004

Develop a draft report that incorporates what the Committee has done and learned during the nearly four years of Council operation (January 2001 through September 2004).

Conduct open hearings to hear comments about the draft report.
Prepare and submit the final report of the Committee, which incorporates relevant comments from the open hearings and the following deliverables.

Desired products from this effort:

A speaker's bureau list which identifies individuals and organizations capable of providing relevant information about the impact of HIPAA regulations on electronic medical record privacy and confidentiality. DHMH Secretary Benjamin is supporting this goal, and has given his full support to this effort by offering speak to groups about the Department's role in implementing HIPAA regulations in the State of Maryland.

A consumer education plan and funding suggestion, after reviewing what governmental and non-governmental are proposing or doing.

A report summarizing the Committee's knowledge of efforts undertaken by licensing boards and professional associations to educate professionals about the impact of HIPAA regulations on electronic medical record privacy and confidentiality.

A bibliography listing available informational about HIPAA regulations and their impact on the privacy and confidentiality of medical records:

- Books,
- Scientific journal articles
- Public magazine articles
- Television and Radio shows
- Audiotapes,
- Videotapes, CDs & DVDs
- Computer Programs,
- Internet Sites, and
- Others identified by the Committee.

Recommendations for administrative, legislative and regulatory changes needed to ensure adequate education of consumers and covered entities on the impact of HIPAA on privacy and confidentiality of the electronic medical record. Recommendations related to training for some covered entities would involve examination of the technological "state of the art." Thus, the Education Committee's work will require close collaboration with the Technology Committee

A list of questions formally and informally submitted by consumers, covered entities, legislators and other interested parties to the Advisory Council and the Council's responses to these questions.

Technology Committee

Members: Ben Steffen, Chair, Judith Letcher, Ronald Moser, DDS, W. Sherod Williams, PhD.

Security issues surrounding protected health care information, particularly public confidence, is critical to the expansion of information technology in health organizations. The significant advances n the use of encryption, user authentication, and firewall technology have sparked a rapid expansion

of electronic commerce. Yet, real issues remain. Some concerns are due to limitations in current technology and others can be attributed to a general lack of understanding.

The Technology Committee was formed in the summer of 2001. Two meetings took place in the fall and were devoted to identifying public concerns in the technology arena. The primary concerns were:

E-mail exchange of health information: The public is generally aware that e-mail is not secure. Proposed HIPAA security regulations require encryption of e-mails containing protected health information. The Committee believes that the use of standard unencrypted e-mail transmission is relatively common in health care. The Committee identified e-mail systems as possible avenues for additional study.

Internet-based transmission systems for patient information: The exchange of sensitive clinical and administrative information is occurring via the Internet. A variety of security techniques, such as secure socket layers and digital certificates, are used to protect the content. The Committee believes further study to identify best practices for practitioners at different technological levels of sophistication may be valuable.

Use of Digital Electronic Imaging Technology: The use of digital imaging offers enormous opportunities to increase the efficiency of providers, to promote better patient care, and to eliminate potential sources of medical errors. This technology is relatively expensive and electronic storage intensive. For example, only about twenty patient cardiac studies will fit on a single 2.1-gigabyte optical disk. The systems required to store and access the information can cost several hundred thousand dollars. The Committee discussed the need to gain a better understanding of this technology and to analyze the barriers that small organizations face in adopting this promising technology.

Continuing Violations of Privacy: Some Committee members voiced concerns on possible weakening of personal privacy protections. The Committee concluded that cataloging the most common violations and methods of technological penetration/breaches would be a useful guide to providers.

Public Education on Technology Issues in Health Care and on HIPAA: Although efforts to make providers and payers aware of HIPAA have progressed, few organizations have focused on public education initiatives. To confirm this, the Committee conducted an informal survey of payers and concluded that while most were focused on internal remediation, there is little emphasis on enrollee education programs. The Committee believes that the Council could play an important role in educating the public on the HIPAA initiatives. One work product would be formulating a "piece of mind" communiqué to advise patients of e-record benefits and protections. This would have an alternative focus to the informed consent documents, such as:

1. Benefits of electronic medical information, including improved quality of care and timely transfer of information between providers;
2. Information on the technology used to transfer the information;
3. Protections that are required/employed;
4. Typical risks; and,
5. Glossary to define common terms.

Technology Committee Plans for 2002: The Committee will continue to refine potential initiatives and will present recommendations to the Council in the spring. A major limitation in tasking any of the initiatives may be the lack of staffing currently available from DHMH. Without additional DHMH resources, it seems unlikely that any of the Committee's proposals can move forward at an appropriate pace.

Council Goals for 2002

The most important issue for us to address early in 2002 is the relationship between HIPAA and Maryland's medical privacy laws. The medical community needs to know what changes are necessary to comply with HIPAA, and the legislature needs to know if Maryland's medical privacy laws should be amended to conform to the federal rules. The Council, through its legal counsel Fred Ryland, has been reviewing the HIPAA regulations and Maryland law. Attached, as Appendix D is a draft analysis, which will be distributed to interested groups for comment. Comments will be reviewed and the Council will issue recommendations to the medical community and the legislature this year. Consistent with that, we will be working with state and private organizations on what type of educational training will be necessary to implement the HIPAA rules and to ensure that Maryland's law is strictly followed.

We will also continue to work on the issues raised in the response to Delegate Hurson and the issues identified by the Committees. We will invite written comments or hold a public hearing on those and other issues of concern.

Conclusion

Our goal is to keep the legislative and executive branches informed about developments in medical privacy and to provide each with recommendations. This year has been one of education and monitoring the federal HIPAA statute for its impact on Maryland law. Next year we will move from the formative stage to the investigative, and will submit a final comparison of State and Federal privacy laws, an education plan, and legislative recommendations. In the interim, our activities are reported on our website http://www.dhmh.state.md.us/sacmpc/.

Appendixes

Appendix A

Maryland Confidentiality of Medical Records Act

Appendix A

LEGISLATIVE HISTORY OF THE CREATION OF THE MARYLAND STATE ADVISORY COUNCIL ON MEDICAL PRIVACY AND CONFIDENTIALITY

The State Advisory Council on Medical Privacy and Confidentiality was created as part of omnibus legislation to address certain issues that had arisen in application of the Maryland Confidentiality of Medical Records Act (MCMRA), §§ 4-301 to 4-403 of the Health General Article, since its implementation in 1991. The omnibus bill, Senate Bill 371 of the 2000 Maryland General Assembly, originated as the work product of the Confidentiality of Medical Record Workgroup, an interim group assembled under the auspices of the Senate Environmental Matters Health Subcommittee and its Chair, the Honorable Paula Hollinger.

During the Workgroup's tenure, in September 1999, the Maryland Court of Special Appeals decided the case of *Shady Grove Psychiatric Group v. State of Maryland*, 128 Md. App. 163 (1999), involving investigation of a "hate crime" which occurred near the location of the Shady Grove group. A subpoena was issued for patient lists of the facility for a time frame near when the crime occurred. The Shady Grove group opposed the subpoena on the basis that the MCMRA and the testimonial and non-disclosure privilege for patient-psychiatrist communications prohibited the compelled disclosure. The Court of Special Appeals reversed the decision of the lower court enforcing the subpoena, but in so doing, indicated that the psychiatrist-patient privilege did not preclude disclosure of the names of patients because the information did not relate to the treatment or diagnosis of the patient.

At the initial Senate Economic and Environmental Matters Committee hearing on SB 371, the stated objectives of the legislation included: preventing the sale, rental, or barter of a medical record; establishing a mandatory accreditation system by the Maryland Health Care Commission for claims clearinghouses; revising the law on mental health records to allow "personal notes" with privacy protection beyond that for the mental health record; adding punitive damages for obtaining a record under false pretenses, for commercial gain, or for malicious harm; amending the Courts and Judicial Proceedings article to make the privileges consistent with MCMRA provisions; and, creating a state advisory council on medical privacy and confidentiality. Appendix E (1)-Sponsor Testimony & Appendix E (2)-Bill Analysis, Senate Economic and Environmental Affairs Committee.

SB 371 had broad testimonial support and passed out of the Committee with amendments that expanded the charge of the state advisory council in two areas: 1) to facilitate dissemination of information on and compliance with federal standards for privacy of medical information and 2) to study the issue of patient notification subsequent to transfer of records following ownership changes, death of a provider, or corporate sale, dissolution or bankruptcy which involve medical records. In addition, some changes were made to expand the composition of the proposed council. Appendix E (3) Unofficial Copy of Senate Economic and Environmental Affairs Amendments to SB 371; Appendix E (4) Floor Report; Appendix E (5) Bill Analysis, Senate Bill 371, by the House Environmental Matters Committee.

On the House side, the major amendment was to delete the provision for civil punitive damages on the basis that it was unnecessary due to the strong criminal provisions already in the MCMRA. Appendix E (6) Unofficial Copy of House Environmental Matters Amendments; Appendix D (7) Floor Report, Senate Bill 371, by the House Environmental Matters Committee. As amended, the bill passed the House of Delegates by a vote of 130-1. The Senate concurred in the House amendments to SB 371 and passed the bill by a vote of 45-0. SB 371 was signed into law by Governor Parris Glendening as Chapter 270 of the Laws of Maryland 2000 on May 11, 2000. (Appendix E (7) Bill Chronology; Appendix E (8) Senate Bill 371, 2000 Regular Session Enrolled Bill.

In its final form, the legislation directed to Council to:

(1) advise the General Assembly of emerging issues in the confidentiality of medical records;

(2) conduct hearings;

(3) monitor developments in federal law and regulations regarding:

(i) confidentiality of medical records;

(ii) health care information technology;

(iii) telemedicine; and,

(iv) provider and patient communication;

(4) facilitate dissemination of information on, and compliance with, federal standards for privacy of individually identifiable health information;

(5) study the issue of patient or person in interest notification subsequent to:

(i) the transfer of records relating to the transfer of ownership of a health care practice;

(ii) the death, retirement, or change in employment of a health care practitioner; or,

(iii) the sale, dissolution, or bankruptcy of a corporation, which has ownership interests, or possession of medical records;

(6) study medical databases and the electronic transmission of data in relation to its impact on patient confidentiality.

Appendix B

State Advisory Council Member List

Appendix B

STATE ADVISORY COUNCIL
ON MEDICAL PRIVACY AND CONFIDENTIALITY
Member Roster

Name	Area of Representation Appointment Term	Fax E-mail
Eleni Anagnostiadis Manager, Pharmacy Support Services	Chain Drug Stores Term expired: 06-30-01 (Resigned due to change in employment)	Fax: 301-618-4956 eanagnostiadis@giantofmaryland.com
Robert Baum	Consumer Term expires: 06-30-04 Chair	Fax: 301-896-0123 Rlb5@hotmail.com
Georges C. Benjamin, M.D. Secretary MD Department of Health & Mental Hygiene	Secretary, DHMH Term expires: 06-30-02	Fax: 410-767-6489 benjaming@dhmh.state.md.us
Terezie Bohrer, MSW, RN	Mental Health Association of MD Term expires: 06-30-02	Fax: 301-262-3797 tsbohrer@yahoo.com
Harry Brandt, M.D. Chairman, Department of Psychiatry St. Joseph's Hospital	Medical Confidentiality Interest Term expires: 06-30-04	Fax: wbrandt@home.com
Mary Davis	Nurse Term expired: 06-30-01	Fax: spdavis105@email.msn.com
Evan DeRenzo, PhD	Medical Ethicist Term expires: 06-30-02	Fax: 301-279-0545 ederenzo@worldnet.att.net
Timothy Doran, M.D.	Physician, Pediatrics Term expires: 06-30-04	Fax: 410-512-8083 tdoran@gbmc.org
Thomas Evans	Pharmacist Term expires: 06-30-03	Fax: 410-877-9445 tevans@jhu.edu
Katherine Hairston-Neale	Organized Labor-PSNA Term expires: 06-30-03	Fax: 410-642-1877 khneale@coolemail.com

Name	Area of Representation Appointment Term	Fax E-mail
Thomas Hobbins, M.D., FACP	Physician Term expires: 06-30-03 (Deceased)	Fax: 410-433-3371 thobbins@psr.org
The Honorable Paula Hollinger Maryland State Senate	Senate Term expires: 06-30-04	Fax: 410-841-1143 paula_colodny_hollonger@senate.md.us
James Ishikawa	Computer Security Encryption Expert Term expired: 06-30-01 (Attended no meetings, expelled from council by law)	Fax: 301-294-3389
Eugene Jones, Jr. Director of Medical Records University of Maryland Medical System	Medical Records Professional Term expires: 06-30-03	Fax: 410-328-8598 ejones@umm.edu
Jemima Kankam, M.D.	Psychiatrist Term expires: 06-30-04	Fax: 301-604-4929 jakankam@lkacc.com
Margaret Kostopoulos	Hospital Industry Term expires: 06-30-02 (retired/resigned)	Fax: pkostopoulos@doctors-community.com
Judith Letcher	Health Industry Term expired: 06-30-01	Fax: 410-281-6113 Judy.G.Letcher@kp.org
Pearl Lewis	MD Patient Advocacy Group Term expires: 06-30-02	Fax: dplewis@erols.com
Oscar Morgan Director, Mental Hygiene Administration MD Department of Health & Mental Hygiene	DHMH Term expires: 06-30-04	Fax: 410-333-5402 morgano@dhmh.state.md.us
Ronald Moser, DDS	Dentist Term expires: 06-30-03	Fax: 301-262-3594 toothflr@aol.com
Adrian Mosley	Licensed Clinical Social Worker Term expired: 06-30-01	Fax: 410-363-9062 amosley@jhu.edu
Carla Pettus	Consumer Term expires: 06-30-04	Fax: 202-454-8215 cpettus@pepcoenergy.com

Name	Area of Representation Appointment Term	Fax E-mail
The Honorable Alfred Redmer Maryland House of Delegates	House of Delegates Term expires: 06-30-03	Fax: 410-841-1149 alfred_redmer@house.state.md.us
Stephanie Reel Chief Information Officer Johns Hopkins University	Hospital/Research Term expires: 06-30-03	Fax: 410-516-3085 sreel@jhu.edu
David Roling Wharton Levin Ehrmantraut Klein & Nash	MD Defense Bar Association Term expires: 06-30-02	Fax: dar@wlekn.com
Ben Steffen Maryland Health Care Commission	Maryland Health Care Commission Term expires: 06-30-02	Fax: 410-358-1236 bsteffen@mhcc.state.md.us
Christine Warren	Life Insurance Industry Term expires: 06-30-03	Fax: 410-895-0085 cwarren@fglife.com
W. Sherod Williams, PhD	Psychologist Term expires: 06-30-04	Fax: 301-593-3879 ahs_inc@yahoo.com
Wayne Willoughby Janet, Willoughby & Gershon, Getz, & Jenner, LLC	MD Plaintiff's Bar Term expires: 06-30-04	Fax: 410-653-9030 wmw@medlawlegalteam.com

Appendix C

State Advisory Council Correspondence

STATE OF MARYLAND
DHMH
Maryland Department of Health and Mental Hygiene
201 W. Preston Street • Baltimore, Maryland 21201
Parris N. Glendening, Governor - Georges C. Benjamin, M.D., Secretary

State Advisory Council on Medical Privacy and Confidentiality
Robert Baum, Esquire, Chairman

October 30, 2001

Mr. Steven Larson
Maryland Insurance Commissioner
Maryland Insurance Administration
525 St. Paul Place
Baltimore, MD 21202-2272

Dear Mr. Larson:

As Chairman of the State Advisory Council on Medical Privacy and Confidentiality, I am writing to invite you, or a designee, to attend our monthly meetings. The full Council regularly meets the second Thursday of each month at varying locations. The next meeting is scheduled for November 8, 2001 from 6:00 p.m. to 8:00 p.m. at the Howard Community College Business Training Center, 6751 Gateway Drive, Columbia, Maryland.

The Advisory Council was formed by legislation enacted by the 2000 General Assembly to give recommendations on issues concerning the confidentiality of medical records and other issues related to health information and patient confidentiality. Advisory council members will keep the General Assembly informed on emerging issues in the confidentiality of medical records and monitor developments in federal law regarding health care information technology, telemedicine, and provider and patient communications. The panel will also help disseminate information on and encourage compliance with federal standards for privacy of health information.

There is tremendous overlap between medical privacy and confidentiality and health insurance. Therefore, as questions and issues arise, I believe the Council could benefit by drawing upon the knowledge, experience and insight that you or your staff could provide. For example, the Education Committee is very interested in any plans the Maryland Insurance Administration may have to provide consumer education on the federal Health Insurance Portability and Accountability Act. Please advise me whether you, or your designee, will be able to attend our next meeting and meetings in the future, by calling me at 301-896-0123 or the Council's staff member, Linda Neeley at 410-767-3877.

Sincerely,

Robert Baum /lm

Robert Baum, Chairman
State Advisory Council on Medical
Privacy and Confidentiality

Enclosure (Driving Directions)

cc: Richard Proctor
Linda Neeley
Fred Ryland

STATE OF MARYLAND
DHMH
Maryland Department of Health and Mental Hygiene
201 W. Preston Street • Baltimore, Maryland 21201
Parris N. Glendening, Governor - Georges C. Benjamin, M.D., Secretary

State Advisory Council on Medical Privacy and Confidentiality
Robert Baum, Esquire, Chairman

October 30, 2001

Mr. J. Joseph Curran, Attorney General
Office of the Attorney General
200 St. Paul Place
Baltimore, MD 21202-2021

Dear Mr. Curran:

As Chairman of the State Advisory Council on Medical Privacy and Confidentiality, I am writing to invite you, or a designee, to attend our monthly meetings. The full Council regularly meets the second Thursday of each month at varying locations. The next meeting is scheduled for November 8, 2001, from 6:00 p.m. to 8:00 p.m., at the Howard Community College Business Training Center, 6751 Gateway Drive, Columbia, Maryland.

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The medical record of a resident of Maryland may begin before or at birth and continue through death and burial. A preliminary draft report prepared by Council staff identified 29 bills proposed or passed during the 2001 General Assembly Session that directly or indirectly could have a bearing on medical privacy and access/transmission of identifiable health information. Although many of these bills are linked to the Health-General and Health-Occupations Articles, others appear in the Insurance, Human Relations Commission, Labor & Employment, Transportation, State Government, Crimes & Punishment, and Courts & Judicial Proceedings Articles. I believe that the Attorney General's office may have the best overall knowledge of the diverse laws which impact medical privacy. As questions and issues arise, I believe the Council could benefit by drawing upon the knowledge, experience, and insight that you, or your staff, could provide. Please advise me whether you or your designee will be able to attend our next meeting and meetings in the future by calling me at 301-896-0123 or the Council's staff member, Linda Neeley at 410-767-3877.

Sincerely,

Robert Baum/lcn

Robert Baum, Chairman
State Advisory Council on Medical
Privacy and Confidentiality

Enclosure (Driving Directions)
cc: Richard Proctor
Linda Neeley
Fred Ryland

STATE OF MARYLAND

Maryland Department of Health and Mental Hygiene
201 W. Preston Street • Baltimore, Maryland 21201
Parris N. Glendening, Governor - Georges C. Benjamin, M.D., Secretary

State Advisory Council on Medical Privacy and Confidentiality
Robert Baum, Esquire, Chariman

December 20, 2001

Ms. Pegeen A. Townsend
Sr. Vice President, Legislative Policy
The Association of Maryland Hospitals &
Health Systems
6820 Deerpath Road
Elkridge, Md 21075-6234

Dear Ms. Townsend,

Thank you for your letter of October 1, 2001, and your enclosed analysis from the American Hospital Association.

Your letter requests that the State Advisory Council on Medical Privacy and Confidentiality identify which, if any, sections of the Health Improvement Portability and Accountability Act (HIPAA) preempt Maryland health care privacy laws. I am pleased to report that the Advisory Counsel has and will devote a considerable amount of its efforts towards that end. We believe that understanding the relationship between HIPAA and Maryland law is one of the most important tasks of our Advisory Counsel. We plan to release a draft analysis in our Annual Report, which will be issued in December, and solicit comments from interested parties. The extent of comments will determine when we issue a final report.

Pursuant to our enabling legislation, the hospital industry can have one representative on the Advisory Council. However, Margaret Kostopolous, who was representing the hospital sector, has retired. Accordingly, you are invited to suggest to the Governor a replacement. In the interim, I would permit a Hospital Association's representative to participate (but not vote) in our meetings. Our meetings are held at 6:30 p.m. on the second Thursday of the month at the Howard Community College-Business Training Center, Columbia Gateway Campus, 6751 Gateway Drive, Columbia, Maryland. Please let me know if you will be sending an interim representative.

We look forward to receiving your comments and to further working with your organization.

Sincerely,

Robert L. Baum

Appendix D

Maryland Confidentiality of Medical Records Act
Compared with HIPAA Privacy Statute and Regulation

HIPAA Regulations and Maryland Law Comparison Chart

February 2002: This comparison chart has been developed to explore similarities and differences between the Maryland Confidentiality of Medical Records Act (MCMRA) and the federal Health Insurance Portability and Accountability Act (HIPAA). The chart will be revised and updated periodically.

Maryland Confidentiality of Medical Records Act
Compared with HIPAA Privacy Statute & Regulation

Topic	CFR 45CFR	Federal Law	HG	State Law Provision	Comparison
Legal: Authority	**160.101**	**HIPAA (1996) 42 USC § 1320d; regulatory delegation; anti-fraud**	**State health regulatory authority**	**1990 Maryland Laws, Chapter 480, As amended, found at HG 4-301 *et seq.***	**Maryland law is more solidly based; legal issues exist of federal statutory and regulatory authority**
Coverage: Covered Entities Generally	**160.102 160.103**	**Defined as: health plan, clearing-house, or provider Who transmit health info in electronic form in covered transaction**	**302(a), (d)**	**Regulates health care providers and facilities on original disclosure, all persons on redisclosure**	**Due to limited federal statutory base, only providers, payers, and claims clearinghouses included in federal coverage, except by contract, while state statute covers everyone**
Compliance Procedures: Business Associates Generally	**160.103 164.502(e) 164.514(e)**	**Concept needed due to limitation of statutory jurisdiction**	**No need for comparable provision**	**Prohibition on redisclosure protects under state law**	**Limitation of federal jurisdiction mandates this administrative legal duty**
Coverage: Alcohol and Drug Abuse Treatment	**160.103 health care health care provider**	**42 CFR Part 2 coincides**	**302(b)(2) see also HG 8-601(c)**	**MCMRA makes inapplicable**	**Both federal HIPAA and alc/drug regulations govern with little conflict**
Coverage: Developmental Disability Info	**160.103 health care provider**	**Includes care of developmentally disabled**	**302(b)(3) Coverage at 7-1008 to 1011**	**MCMRA makes inapplicable**	**Federal law adds coverage**

TOPIC	CFR's 45CFR	Federal Law	HCA Article	State Law Provision	Comments
Coverage: Oral Communication	160.103 164.501	Covered	301(g)(1)(ii)	Covered	Both regulate oral communications
Compliance Procedures: Record Retention and Destruction	160.201 164.502	No federal retention schedule for records, just for administrative activities	403(b),(c)	Five year period except for minors, then age 18 plus three years	State law governs
Coverage: Interaction with Federal and State Public Disclosure Law	160.203 164.512(a)	For federal law, try to reconcile, if state, more stringent?	302(a)(2)(ii) also, Ct. & Jud Pro. § 10-617(b)	Prohibits disclosure of medical or psychological information about an individual, except for autopsy	Generally looks to see which law provides the most privacy protection
Legal: Preemption Generally	160.203	Federal Statute 42 USC § 1320d Controls	State law applies within state	Not preempted if "more stringent" or done for certain purposes	Selective; federal generally controls, see specific issues
Legal: Preemption Secretarial Exception Process	160.203(a)(1); 160.204, 160.205	42 USC § 1320d-7(a)(2)(A)(i)	State may apply for exception from DHHS Secretary	If necessary to prevent healthcare fraud, state regulation of insurance, state reporting on healthcare delivery or costs or other compelling public health, safety or public welfare need	State may seek exception when conflicting state law provision is necessary to address specified state need.
Legal: Preemption Exception Controlled Substance law	160.203(a)(2)	42 USC § 1320d-7(a)(2)(A)(ii) if the principle purpose is the regulation of the manufacture, distribution or dispensing of controlled substances under federal or state law	See Art. 27, §§ 276-305	Look to state law on controlled substances	Preemption does not apply to state and federal law addressing controlled substances.

Topic	CFRs (45CFR)	Federal Law	HGI	State Law Provision	Comment
Legal: Preemption Specific-Inapplicable-"More Stringent State Law"	160.203(b) 160.202	Public Law 104-191 § 264(c)(2)	Look to specific provisions	State law "more stringent" i.e. provides more protection to individual or gives individual more access to own records	When state law is more stringent, then no preemption occurs and the state law govern.
Legal: Preemption Specific-Inapplicable-State Mandated Reports	160.203(c)	42 USC § 1320d-7(b)	Look to specific provisions	Look to state law for compelled reports	Preemption does not apply to reports of disease or injury, child abuse, birth or death, conduct of public health surveillance, investigation or intervention
Legal: Preemption Specific-Inapplicable-State Regulatory Activities and Reports	160.203(d)	42 USC § 1320d-7(c)	Look to specific provisions	Look to state law for compelled reports	Preemption does not apply to legally mandated reporting or access to info for management audits, financial audits, program monitoring and evaluation, licensure or certification of facilities or individuals
Disclosures: Governmental Access	160.300 164.512(b) 164.512(f)	Allows federal access for HIPAA enforcement; otherwise more detailed rules	306	Listing of activities authorizing disclosure, with relatively simple rules	Federal law is more specific and restrictive in parts, but gives self mandatory access to enforce HIPAA
Remedies: Good Faith Immunity	160.304	No direct provision; mitigation through due diligence; procedural implementation	308	Maryland law provides a strong defense against litigation based on a technical violation	State law provides protection to medical community against technical violations; federal regulations do not
Disclosures: Emergency Treatment	164.506(a)(3)(A)	May acquire to treat in emergency situations, but get consent when possible	305(b)(6)	Allows a provider to make a professional determination to disclose to provide for emergency health care needs	Both laws allow for disclosures in emergency circumstances

Topic	CFR Section	Federal Law	HG Title 4	State Law Provision	Comments
Disclosures: Mandatory/ Permissive	164.502 (a)(2)	Mandatory only: 1) to patient, 2) to OCR for enforcement	306	Disclosures for public purposes mandatory	HIPAA makes many of the public use disclosures permissive, but state law compels
Coverage: Mental Health Records	164.508 (a)(2)	Psych notes separately protected	307, see also 306(b)(7)	Detailed protection scheme	Maryland law more detailed and perhaps more stringent
Disclosure: Law Enforcement Investigation	164.512 (f)(1)	Allows compliance with formal process if info material and relevant and specific and limited in scope	306(b)(3), (7)	Allows disclosures for sole purpose of investigation but requires agency written standards	State law compels, while federal law allows disclosure for compulsory law enforcement investigation
Disclosure: Employer Access	164.512 (b)(1)(v)	Allow access for work related illness issues	303,307; Insurance 4-403	By consent or mandatory process. Allows disclosure; Regulates disclosure by insurers, employer not listed	State law appears to give broader protection to employees regarding access to their medical records
Remedies: Civil Penalties	164.102; 42 USC § 1320d-5(a)	Administrative penalties of $100 per violation and calendar limit of $25,000	309(f)	No public civil enforcement penalties, but actual damages	Federal law provides for modest civil penalties, but does not allow a private right of action for actual damages
Remedies: Criminal Penalties	164.102; 42 USC § 1320d-6	Knowing acquisition or disclosure of PHI allows $50,000 fine, 1 year jail, add false pretenses, $100,000 5 years, intent to sell for gain or harm, $250,000, 10 years	309(d), (e)	Knowing, willful acquisition under false pretenses or deception or wrongful disclosure $50, 000, 1 year, with false pretenses, $100,000 5 years, intent to sell for gain or harm, 10 years, $250T	State and federal criminal penalties are virtually identical

[illegible]	CFRS 45CFR	Federal Law	HGS Title 4	State Law Provision	Comparison
Coverage: Information-Electronic Claims	164.104; 42 USC §1320d-2	Coverage of entities predicated on a transmission of information in electronic form	301(g)	Indirectly, as most information would be a record, relate to health care and be associated with identity of a patient	Federal coverage is predicated upon the need to strictly regulate the security and privacy of electronic claim information, state law has inclusive phrase "any form or medium of transmission"
Coverage: Telemedicine	164.501 treatment	Allows communication among providers	305(b)(4)	Allows communications for treatment	Both laws permissive
Coverage: Correctional; Juvenile Detention	164.501 164.506 (a)(2)(ii), (3)(i)(B)	Yes, allows disclosure for treatment	307(j)	Yes, allows disclosure to director for treatment	Both laws cover facilities, but allow disclosure of records for treatment
Coverage: Educational Info	164.501	PHI Exclusion	302(b)	Silent on coverage of educational records, but if not in medical record, not covered	Educational records including health information governed by FERPA
Disclosures by Patient Consent: Payment	164.501; 164.502 (a)(1)	Except for mental health, allows disclosure to carry out payment	305(b)(5)	If a claim has been filed, then permissive disclosure	Similar payment disclosure provisions
Disclosures: Marketing Communication	164.501 164.514 (e)	Permits some marketing and sets up rules	305(b)(1)(i)	Arguably allows disclosures to permit providers to offer services	Federal law is more specific, not clear whether more restrictive
Business Associate Agreements	164.502 (e) 164.504 (e)	Need legal document to obligate confidentiality for health care delivery partners	302(d)	Not needed since covered under redisclosure provisions	Federal law requires extensive legal paperwork in terms of business associate agreement
Coverage: Deceased & Autopsy Reports	164.502(f)	Deceased individuals covered	301(j),k)	Deceased individuals covered, but autopsy has special rules	Under both laws, deceased PHI is protected, but autopsy subject to administrative discretion

Topic	CFRS 45CFR	Federal Law	Hd	State Law Provision	Comparison
Covered Information Generally	164.502 (a)	Protected Health Information (PHI)	301(g)	"Medical record" if: i) in patient record; ii)may identify patient; iii) relate to patient health	Similar broad coverage, federal concept may be a little broader
General Presumption of Confidentiality	164.502 (a)	General rule of confidentiality	302(a)	Health care provider shall keep the medical record confidential; disclose only pursuant to law or the act	State and federal law contain general rule of confidentiality
Disclosure: Minimum Necessary	164.502 (b) 164.514 (d)	General rule of only disclosing minimum necessary to accomplish purpose, except for treatment	307(c)	Minimum necessary applied to mental health record disclosures	Federal rule of minimum necessary disclosure is more formally restrictive than state law, where it is intuitive, but not express
Legal: Minors	164.502 (g)	Looks to state law for minors and consent	301(k) (4) 20-102,103104	Grants minors right to control records where may consent to treatment	State law grants greater privacy protections to minors
Disclosure: Permissive Disclosures Generally	164.502 164.506 164.512	Generally makes disclosures for most purposes permissive	305	Puts many of disclosures necessary for health care operations in the permissive category	Federal law allows disclosures often required for state or federal administrative or legal purposes
Compliance: Monitoring of Persons to whom Data is Released	164.504 (e)	Must act if failure by business associate	302(d)	State law controls under redisclosure statute	Federal jurisdictional limits force contractual monitoring of data release, while state law covers it by statute, sep. contract not required
Consent & Authorization: Patient Consent for Treatment	164.506	Federal law requires a written consent to treat to use records	303,305(b) (1)	State law does not require an express consent to treat form	Federal law starts out the health care process with a consent form, while state law employs it for disclosures
Consent & Authorization: Health Care Operations	164.506 (a)	Federal law establishes tpho consent to treat class	303(a)	State law allows disclosures by virtue of the treatment situation	State and federal law presume that patients should consent to disclosures, federal law requires a form to be signed

Topic	CFR 45CFR	Federal Law	HG§ Article	State Law Provision	Comparison
Consent & Authorization: Elements of Patient Consent	164.506 (c)	Informs about use, refers to notice of practices, permits patient to ask for restrictions on access, allows prospective revocation	No form required	Not comparable as consent to treat form not required	The federal consent to treat form has formal requirements that exceed state law requirements
Consent & Authorization: Patient Consent Expire?	164.506 (c)	No	No form required	No comparable provision	Federal consent to treat form is open-ended
Consent & Authorization: Elements of Patient Authorization	164.508 (c)	Eight elements: specific info, people to whom disclosed, who may make, expiration date, right to revoke, use that may be made (redisclose warning) signature and date and pr capacity	303(b)	Five elements: writing, dated and signed, name of provider, to whom disclosed, period of time valid	Federal law requires a few more elements, and notes weakness under federal law of redisclosure lack of control
Consent & Authorization: Patient Authorization Expire?	164.508(c)	Expiration date or event needed	303(b)(4)	One year maximum	Both require an expiration date, state law controls
Disclosure: Facility Directories	164.510(a)	Unless objection, general patient information may be disclosed	301(b); 302(c)	May disclose, unless instructed not to disclose	Federal law more detailed, but provisions compatible

Topic	45CFR5 45CFR	Federal Law	HG Title	State Law Provision	Comparison
Disclosure: Family or Friend involved in Patient Care	164.510(b)	Follows pt. direction, but if patient not able then provider judgment	305(b)(7)	Unless patient precludes, to immediate family members or person with a close personal relationship, if in accordance with good medical practice.	Both provisions similar.
Disclosure: Legally Compelled	164.512(a)	Allows disclosure for legally compelled activities	305(b)(3) 306(b)(1)-(9); 307	State law gets more specific in the types of compelled disclosures, and has the broad governmental duty provision	State law is mandatory in specific instances, permissive in others. Federal does not override state law for legally compelled disclosures
Disclosure: Public Health	164.512(b)	Detailed list of permitted public health operations	305(b)(3)	Allows public health access	State law less complicated, but similar disclosures permitted
Disclosure: Abuse and Neglect	164.512(c)	Allows disclosure for reporting of suspected abuse and neglect	306(b)(1)	Compels disclosure for suspected abuse or neglect	Federal law permissive, but read in conjunction with mandatory reporting duty
Disclosure: Health Oversight-Provider Licensing and Discipline	164.512 (d)	Health oversight permitted disclosure	306(b)(2)	Compels disclosure for health disciplinary oversight	Federal law permissive, but does not override state law
Disclosure: Judicial and administrative proceedings	164.512(e)	Allows disclosure by court order or by subpoena if certain notice provisions followed	306(b)(6)	Compels disclosure for judicial purposes provided copy of discovery served on patient or judicial waiver based on good cause	Similar provisions apply in both statutes, but vary slightly in details
Disclosure: Law Enforcement-Crime & Public Emergency	164.512(f)	Allows fugitive location release	305(b)(3); 306(b)(7); 307(j)	Allows governmental agencies to perform lawful duties; For mental health patient elopements, gives facility director discretion to reveal information to allow recapture.	Both have express public safety disclosure provisions

Topic	CFR §	Federal Law	HCG §	State Law Provision	Comparison
Disclosure: Coroners	**164.512(g)**	**Information may be disclosed to medical examiners**	**State Gov't 10-617(b)**	**Medical and psychological info protected at death, but autopsy report of a medical examiner is public**	**HIPAA does not regulate medical examiners, and allows info to be disclosed. State law governs.**
Disclosure: Transplant	**164.512(h)**	**Allows disclosures to facilitate transplants**	**305(b)(8); 5-408**	**Allows disclosure for purposes of evaluating for possible donation**	**Similar provisions allow disclosures for transplant evaluation purposes.**
Disclosures: Research	**164.512(i) 164.501 164.508(f)**	**If PHI is to be used, patient authorization required, except if an IRB approves waiver based on specified factors**	**301(g) 305(b)(2)(i)**	**Allows research of non-identifying info and other research or educational purposes if duty not to redisclose signed & subject to IRB requirements**	**Federal law more detailed and restrictive and therefore would govern research uses**
Disclosure: Public Safety Threat	**164.512(j)**	**Allows disclosures to lessen threat to person or the public, to persons who may be able to lessen the threat, except if learned through therapy or self-initiated treatment admission**	**305(b)(3); 306(b)(7); 307(j)**	**Allows governmental agencies to perform lawful duties; For mental health patient elopements, gives facility director discretion to reveal information to allow recapture.**	**Federal law appears to be more restrictive regarding public safety disclosures which originate as a result of therapy.**
Disclosure: Specialized Governmental Functions- Federal Officials, Correctional Services, Public Benefit programs	**164.512(k)**	**Specific provisions covering the military personnel, security and protective services, State Department medical suitability, correctional services and public benefit programs**	**305(b)(3) 307(k)(i)**	**Allows disclosures for purposes of state or federal officials performing lawfully authorized duties**	**Federal law has more specific provisions regarding its own employees. Both provide for disclosures to correctional facilities for purposes of treatment.**

Topic	HHS 45CFR	Federal Law	HIGH	State Law / Provision	Comparison
Disclosure: Worker's Compensation	**164.512(l)**	**Allows disclosures for administration of workers' compensation programs**	**303(b); 305(b)(3)**	**An injured employee would file a claim and authorize disclosure of necessary medical records.**	**Allows state workers' compensation programs to function.**
Coverage: Covered Information-Identifiability	**164.514**	**Lists 18 elements to "de-identify"**	**301(g)(ii)**	**Includes identifiability to be covered**	**Federal law is more specific regarding ability to identify**
Patient Access: Generally	**164.524 164.526**	**Access and comment allowed**	**303 304(b)**	**Access and comment allowed**	**Both laws provide for comment and correction**
Compliance: Procedures-Privacy Officer	**164.530(a)**	**Establishes privacy officer role**		**Implied that someone makes disclosure determinations, but federal law is more prescriptive.**	**No comparable state provision. New designation required in order to comply.**
Legal: Effective Date	**164.534**	**April 2003**		**Now**	**State law effective now, federal in 2003**
Remedies: Private Right Of Action		**No federal private right of action**	**309**	**State law authorizes a private right of action.**	**State law provides for a private right of action, federal law does not.**
Remedies: Enforcement Agency	**65 Fed. Reg. 82381 (12/28/00)**	**DHHS Office of Civil Rights**	**309**	**Private; DHMH licensing and disciplinary agencies; criminal enforcement (county)**	**Federal law provides for a designated enforcement agency; state enforcement is spread among different entities**

Appendix E

Senate Bill Legislation

Appendix E (1)
SB 371 - Medical Records - Confidentiality

PAULA C. HOLLINGER
11th District
Baltimore County

Vice Chair
Economic and Environmental
Affairs Committee
Chair – Health Subcommittee

Senate Chair
Joint Committee on
Health Care Delivery and Financing

National Conference of
State Legislatures

The Senate of Maryland
ANNAPOLIS, MARYLAND 21401-1991

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55 Raisin Tree Circle
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Sponsor Testimony

SB371: MEDICAL RECORDS - CONFIDENTIALITY

Environmental Matters Committee
March 23, 2000

This bill is the result of the Confidentiality of Medical Records Workgroup which met during the interim in an effort to address the existing law on confidentiality of medical records. Even though no privacy legislation has been passed at the federal level, the department of Health and Human Services has issued proposed regulations in this area which have not yet been finalized. We do not anticipate that this legislation will be preempted by federal law, and want to keep Maryland in the forefront of privacy protection. This bill strengthens our existing medical records subtitle.

The subcommittee heard from and this bill is supported by:

- national privacy experts
- leading health care analysts
- assistant attorney's general
- Maryland health care consumers
- data security experts
- advocates from all sectors of the health care and insurance industries

WHAT THE BILL DOES

- Prevents sale, rental, or barter of a medical record (exemption created for transfer of medical records due to change in ownership of health care facility

- Mandates that electronic claims must be from accredited clearinghouses certified by State Health Care Commission

- Restricts portions of medical records relating to psychological tests

- Authorizes the use of "personal notes" that will grant patients and mental health providers more privacy, while protecting third party payor's right to analyze the treatment plans and diagnosis for payment authentication purposes

- Does not affect access to a medical record that is also an educational record under federal law

- Allows mental health evaluations to be obtained when relating to a civil action or Equal Opportunity Commission

- Sets punitive damages for obtaining record under false pretenses or disclosure for commercial gain or malicious harm

- Amends Courts and Judicial Proceedings Article to make disclosure provisions consistent with legal proceeding disclosure as in Health General Article

- Becomes effective July 1, 2000

- Creates a State Advisory Council on Medical Privacy and

Confidentiality:

- Consists of 29 members from legislature, state agencies, health care provider groups, patient advocate groups, medical record groups, labor, social work, the legal profession, and technology industry
- Members serve staggered four year terms
- Governor appoints and can remove members for incompetence or misconduct
- Governor appoints chairman for 2 year term
- Secretary of Health and Mental Hygiene designate staff
- required to provide advice on confidentiality issues
- monitor federal law developments and regulations
- study emerging best practices
- report annually to Governor & General Assembly

Appendix E (2)
SB 371 - Bill Analysis

BILL ANALYSIS

SENATE BILL 371

Medical Records - Confidentiality

SPONSORS:

Senators Hollinger (Chairman, Health Subcommittee) and Senators Conway, Harris, Pinsky, and Sfikas

SUMMARY OF BILL:

This bill establishes a general prohibition against the disclosure by sale, rental or barter of any medical record. An exemption is created for the transfer of medical records due to a change in ownership of a health care practice. Patients or interested parties must be notified of the transfer of health records. Requirements for that notice are provided. The bill also requires payors that accept claims from electronic claims clearinghouses to only accept the claims from clearinghouses: (1) accredited by the Electronic Healthcare Network Accreditation Commission; or (2) certified by the State Health Care Commission.

A health care provider is authorized to disclose a medical record without notification to the interested party to assist in a legal proceeding. Additional restrictions are imposed for the disclosure of records of mental health services. With regard to mental health records, health care providers are authorized to maintain personal notes as necessary and appropriate. A personal note is defined as work product and is generally not discoverable or admissible as evidence in any civil, criminal or administrative action. A personal note is considered part of a person's medical record if the note is disclosed to a third party, including consultants and attorneys who may or may not maintain confidentiality. Also, if a party initiates a medical malpractice or intentional tort against a health care provider, personal notes in the party's medical records are discoverable and admissible as evidence in the legal proceeding. A note that is kept separate from a patient's mental records, is not disclosed to any other person (with the exception of supervisors, consultants or attorneys who maintain confidentiality) and is for the provider's personal use for purposes of Senate Bill 371.

The bill establishes restrictions on the portion of medical records that relate to psychological tests. With certain exceptions, if disclosure would compromise the validity of the test, a mental health care provider is prohibited from disclosing that portion of the medical record to anyone, including the test subject. Raw test data relating to psychological tests may be discoverable or admissible as evidence if the hearing officer or court decides that the expert witness is appropriately qualified to interpret the raw test data. The subject of a psychological test is authorized to designate a licensed psychologist or psychiatrist for disclosure of the subject's medical record. Health care providers are authorized to disclose information on psychological tests under limited circumstances. However, access to or disclosure of a medical record that is also an education record under federal law is not

affected by the bill's confidentiality provisions. An interested party is authorized to obtain mental health evaluations that relate to obtaining or continuing employment in connection with a civil action or a complaint under the aegis of the U.S. Equal Opportunity Commission or on written authorization of the employer or prospective employer.

A health care provider or any other person may be liable for punitive damages if the person knowingly and willfully requests or obtains a medical record under false pretenses or discloses with intent to use or transfer the information for commercial gain or malicious harm. A person is subject to punitive damages for knowingly or willfully disclosing a medical record with intent to transfer or use the health information for commercial gain or malicious harm.

Senate Bill 371 also creates a State Advisory Council on Medical Privacy and Confidentiality. The commission consists of 25 voting members from the legislature, state agencies, health care provider groups, patient advocate groups, medical record groups, labor, social work, the legal profession and the information technology industry. Members serve staggered four year terms and the Governor is required to appoint a chairman for a 2 year term. The Governor is authorized to remove a member for incompetence or misconduct. The Secretary of Health and Mental Hygiene must designate staff for the council.

The council is required to provide advice on confidentiality issues, monitor federal law developments and regulations, study the electronic transmission of data, study emerging best practices to secure patient confidentiality and make recommendations to the General assembly on medical records confidentiality. On or before December 15 of each year, an annual report must be submitted to the Governor and the General Assembly.

Senate Bill 371 amends the Courts and Judicial Proceedings Article to make its disclosure provisions consistent with the provisions on disclosure for a legal proceeding as provided in the Health-General Article.

Senate Bill 371 is effective July 1, 2000.

BACKGROUND:

Under current law, Maryland broadly defines medical records to include any oral, written, or other transmission in any form or medium that is entered into the patient's record, can be readily associated with the patient and relates to the health care of the patient. Generally, Maryland is regarded as a national leader in the area of protecting medical record confidentiality by health privacy advocates. over the last ten years, the legislature has established a general requirement for medical records confidentiality. The legislature has established standards for authorized disclosure and limited exemptions for disclosure of mental health records. Criminal penalties for wrongful disclosure also exist under current law. The State and its agencies were made subject to disclosure penalties in 1997. The largest exemption for disclosure relates to potential claims against a provider. If a patient

or interested party is involved in legal action against a health care provider, medical records may be disclosed to the health provider's insurer or legal counsel to dispose of the claim only. A general prohibition on the use or disclosure of genetic information without the prior written authorization of the person tested has also been enacted by the General Assembly.

Senate Bill 371 is the product of the Confidentiality of Medical Records Workgroup. The group's purpose was to continue to strengthen the comprehensive existing law on medical records confidentiality. The federal Health Insurance Portability and Accountability Act of 1996 (HIPA) contained a provision that required Congress to pass medical records privacy legislation by August 21, 1999. Although the deadline was extended to October 29, 1999, the legislation was not passed. HIPA alternatively required the Department of Health and Human Services (HHS) to issue regulations on confidentiality of medical records by February 21, 2000 if Congress did not pass confidentiality legislation by the October deadline. HHS has recently begun the promulgation process. The Maryland workgroup has sponsored this legislation in anticipation that federal action, when it does occur, will not impose a blanket preemption of state law, but instead, establish a "federal floor" and allow states to maintain existing law with stronger standards than the federal law.

KDM/sn

Appendix E (3)
SB 371 - Amendments

Unofficial Copy
SB0371/634630/1

2000 Regular Session

BY: Economic and Environmental Affairs Committee

AMENDMENTS TO SENATE BILL NO. 371
(First Reading File Bill)

AMENDMENT NO. 1

On page 1, in line 28, strike "and (f)".

AMENDMENT NO. 2

On page 2, in line 30, after "PRACTICE" insert "OR FACILITY".

On pages 2 and 3, strike in their entirety the lines beginning with line 32 on page 2 through line 5 on page 3, inclusive.

On page 9, in line 28, after "(4)" insert "FACILITATE DISSEMINATION OF INFORMATION ON, AND COMPLIANCE WITH, FEDERAL STANDARDS FOR PRIVACY OF INDIVIDUALLY IDENTIFIABLE HEALTH INFORMATION;

(5) STUDY THE ISSUE OF PATIENT OR PERSON IN INTEREST NOTIFICATION SUBSEQUENT TO:

(I) THE TRANSFER OF RECORDS RELATING TO THE TRANSFER OF OWNERSHIP OF A HEALTH CARE PRACTICE;

(II) THE DEATH, RETIREMENT, OR CHANGE IN EMPLOYMENT OF A HEALTH CARE PRACTITIONER; OR

(III) THE SALE, DISSOLUTION, OR BANKRUPTCY OF A CORPORATION WHICH HAS OWNERSHIP INTERESTS OR POSSESSION OF MEDICAL RECORDS;

(6)";

and in line 30, strike "(5)" and substitute "(7)".

On page 10, in line 1, strike "(6)" and substitute "(8)"; and in line 3, strike "(7)" and substitute "(9)".

AMENDMENT NO. 3

(Over)

On page 3, in lines 12 and 13, in each instance, strike "STATE" and substitute "MARYLAND".

AMENDMENT NO. 4

On page 4, after line 24, insert:

"(III) "PERSONAL NOTE" DOES NOT INCLUDE INFORMATION CONCERNING THE PATIENT'S DIAGNOSIS, TREATMENT PLAN, SYMPTOMS, PROGNOSIS, OR PROGRESS NOTES.".

AMENDMENT NO. 5

On page 5, strike beginning with the colon in line 3 down through "(I)" in line 4; and in line 4, after "THAN" insert ":

(I)".

AMENDMENT NO. 6

On page 7, in lines 17, 18, and 20, in each instance, strike "25" and substitute "29"; in line 23, strike "TWO" and substitute "THREE"; and in the same line, after "PHYSICIANS" insert ", INCLUDING:

1. ONE BOARD CERTIFIED PEDIATRICIAN WITH EXPERTISE IN THE CONFIDENTIALITY OF CHILDREN'S MEDICAL RECORDS; AND

2. ONE LICENSED PSYCHIATRIST".

On page 8, in line 21, after "(XX)" insert "ONE SHALL BE A LICENSED PSYCHOLOGIST;

(XXI) ONE SHALL BE A REPRESENTATIVE OF THE LIFE INSURANCE INDUSTRY;

(XXII) ONE SHALL BE A LICENSED PHARMACIST;

(XXIII)";

in line 22, strike "(XXI)" and substitute "(XXIV)"; and in line 23, strike "(XXII)" and substitute "(XXV)".

Appendix E (4)
SB 371 - Floor Report

FLOOR REPORT

SENATE BILL 371

Medical Records - Confidentiality

SPONSORS:

Senators Hollinger (Chairman, Health Subcommittee) and Senators Conway, Harris, Pinsky, and Sfikas

COMMITTEE RECOMMENDATION:

Favorable with 6 Amendments

SUMMARY OF BILL:

Overview:

Senate Bill 371 is the work product of a four-month interim ad-hoc subcommittee on the confidentiality of medical records. The committee welcomed reviews of our current law regarding the confidentiality of medical records from: (1) national privacy experts; (2) leading health care analysts; (3) assistant attorney's general; (4) Maryland health care consumers; (5) data security experts; and (6) advocates from all sectors of the health care and insurance industries. The committee also sought to understand the State's role in protecting medical privacy in light of recent proposed regulations on the same subject from the Department of Health and Human Services -- a very daunting and challenging task.

Senate Bill 371 is supported by every interested party and stakeholder that participated in the ad-hoc subcommittee. The bill strengthens our existing medical records subtitle by:

- Prohibiting the disclosure by sale, rental or barter of any medical record. (An exemption is created for the transfer of medical records due to a change in ownership of a health care facility.);

- Requiring payors that accept claims from electronic claims clearinghouses to only accept the claims from clearinghouses: (1) accredited by the Electronic Healthcare Network Accreditation Commission; or (2) certified by the State Health Care Commission. The subcommittee found significant privacy breaches in this area and a state & private regulatory partnership will provided a significant step toward accountability;

- Authorizing the use of "personal notes" that will grant patients and mental health providers more privacy, while protecting the third party payor's right to analyze the treatment plans and diagnosis for payment authentication purposes;

- Protecting raw psychological test data from uniformed interpretation and ensuring that such data may only be reviewed by qualified persons;

- Providing for punitive damages for those persons that knowingly and willfully request, obtain, or disclose a medical record under false pretenses with the intent to sell, transfer, or use individually identifiable health information for commercial gain, malicious harm or personal gain; and

- Creating a State Advisory Council on Medical Privacy and Confidentiality to examine burgeoning confidentiality issues, particularly the significant impact of the proposed federal regulations on *Standards for Privacy of Individually Identifiable Health Information*. For example, some analysts suggest that the recently proposed federal regulations may cost the health care industry two to three times the amount of money and resources it took them to prepare and coordinate for Y2K (Year 2000) compliance. It is essential that our state be prepared and informed about the significant patient confidentiality issues and industry implications that emerging federal rules may have on our citizens and our health care facilities.

In-Depth Analysis:

This bill establishes a general prohibition against the disclosure by sale, rental or barter of any medical record. An exemption is created for the transfer of medical records due to a change in ownership of a health care practice. Patients or interested parties must be notified of the transfer of health records. Requirements for that notice are provided. The bill also requires payors that accept claims from electronic claims clearinghouses to only accept the claims from clearinghouses: (1) accredited by the Electronic Healthcare Network Accreditation Commission; or (2) certified by the State Health Care Commission.

A health care provider is authorized to disclose a medical record without notification to the interested party to assist in a legal proceeding. Additional restrictions are imposed for the disclosure of records of mental health services in response to *State of Maryland v. Shady Grove Hospital*, 128 Md.App. 163. With regard to mental health records, health care providers are authorized to maintain personal notes as necessary and appropriate. A personal note is defined as work product and is generally not discoverable or admissible as evidence in any civil, criminal or administrative action. A personal note is considered part of a person's medical record if the note is disclosed to a third party, including consultants and attorneys who may or may not maintain confidentiality. Also, if a party initiates a medical malpractice or intentional tort against a health care provider, personal notes in the party's medical records are discoverable and admissible as evidence in the legal proceeding. A note that is

kept separate from a patient's mental records, is not disclosed to any other person (with the exception of supervisors, consultants or attorneys who maintain confidentiality) and is for the provider's personal use for purposes of Senate Bill 371.

The bill establishes restrictions on the portion of medical records that relate to psychological tests. With certain exceptions, if disclosure would compromise the validity of the test, a mental health care provider is prohibited from disclosing that portion of the medical record to anyone, including the test subject. Raw test data relating to psychological tests may be discoverable or admissible as evidence if the hearing officer or court decides that the expert witness is appropriately qualified to interpret the raw test data. The subject of a psychological test is authorized to designate a licensed psychologist or psychiatrist for disclosure of the subject's medical record. Health care providers are authorized to disclose information on psychological tests under limited circumstances. However, access to or disclosure of a medical record that is also an education record under federal law is not affected by the bill's confidentiality provisions. An interested party is authorized to obtain mental health evaluations that relate to obtaining or continuing employment in connection with a civil action or a complaint under the aegis of the U.S. Equal Opportunity Commission or on written authorization of the employer or prospective employer.

A health care provider or any other person may be liable for punitive damages if the person knowingly and willfully requests or obtains a medical record under false pretenses or discloses with intent to use or transfer the information for commercial gain or malicious harm. A person is subject to punitive damages for knowingly or willfully disclosing a medical record with intent to transfer or use the health information for commercial gain or malicious harm.

Senate Bill 371 also creates a State Advisory Council on Medical Privacy and Confidentiality. The commission consists of 25 voting members from the legislature, state agencies, health care provider groups, patient advocate groups, medical record groups, labor, social work, the legal profession and the information technology industry. Members serve staggered four year terms and the Governor is required to appoint a chairman for a 2 year term. The Governor is authorized to remove a member for incompetence or misconduct. The Secretary of Health and Mental Hygiene must designate staff for the council.

The council is required to provide advice on confidentiality issues, monitor federal law developments and regulations, study the electronic transmission of data, study emerging best practices to secure patient confidentiality and make recommendations to the General assembly on medical records confidentiality. On or before December 15 of each year, an annual report must be submitted to the Governor and the General Assembly.

Senate Bill 371 amends the Courts and Judicial Proceedings Article to make its disclosure provisions consistent with the provisions on disclosure for a legal proceeding as provided in the Health-General Article.

Senate Bill 371 is effective July 1, 2000.

COMMITTEE AMENDMENTS:

Amendment No. 1: Technical

Amendment No. 2: Removes a notification provision from the bill and establishes that patient notification after the sale of a practice or facility be examined by the Advisory Council.

Amendment No. 3: Technical

Amendment No. 4: Narrows the definition of a personal note. A personal note may not include the patient's diagnosis, treatment plan, symptoms, prognosis, or progress notes.

Amendment No. 5: Technical

Amendment No. 6: Adds additional members to the Advisory Council.

FISCAL IMPACT:

Special fund expenditures increase by $41,400 in FY 2001 for one staff position within the Maryland Health Care Commission.

BACKGROUND:

Under current law, Maryland broadly defines medical records to include any oral, written, or other transmission in any form or medium that is entered into the patient's record, can be readily associated with the patient and relates to the health care of the patient. Generally, Maryland is regarded as a national leader in the area of protecting medical record confidentiality by health privacy advocates. over the last ten years, the legislature has established a general requirement for medical records confidentiality. The legislature has established standards for authorized disclosure and limited exemptions for disclosure of mental health records. Criminal penalties for wrongful disclosure also exist under current law. The State and its agencies were made subject to disclosure penalties in 1997. The largest exemption for disclosure relates to potential claims against a provider. If a patient or interested party is involved in legal action against a health care provider, medical records may be disclosed to the health provider's insurer or legal counsel to dispose of the claim only. A general prohibition on the use or disclosure of genetic information without the prior written authorization of the person tested has also been enacted by the General Assembly.

Senate Bill 371 is the product of the Confidentiality of Medical Records Workgroup. The group's purpose was to continue to strengthen the comprehensive existing law on medical records confidentiality. The federal Health Insurance Portability and Accountability Act of 1996 (HIPA) contained a provision that required Congress to pass medical records privacy legislation by August 21, 1999. Although the deadline was extended to October 29, 1999, the legislation was not passed. HIPA alternatively required the Department of Health and Human Services (HHS) to issue regulations on confidentiality of medical records by February 21, 2000 if Congress did not pass confidentiality legislation by the October deadline. HHS has recently begun the promulgation process. The Maryland workgroup has sponsored this legislation in anticipation that federal action, when it does occur, will not impose a blanket preemption of state law, but instead, establish a "federal floor" and allow states to maintain existing law with stronger standards than the federal law.

DO/sn

BILL ANALYSIS

SENATE BILL 371

Medical Records - Confidentiality

HEARING: 03/23/00

SPONSOR: Senator Hollinger, et al.

SUMMARY OF BILL:

Senate Bill 371 establishes a general prohibition against the disclosure by sale, rental or barter of any medical record. An exemption is created for the transfer of medical records due to a change in ownership of a health care practice. Patients or interested parties must be notified of the transfer of health records. Requirements for that notice are provided. SB 371 also requires payors that accept claims from electronic claims clearinghouses to only accept the claims from clearinghouses accredited by the Electronic Healthcare Network Accreditation Commission or certified by the Maryland Health Care Commission.

Under SB 371, a health care provider is authorized to disclose a medical record without notification to the interested party to assist in a legal proceeding. Additional restrictions are imposed for the disclosure of records of mental health services in response to *State of Maryland v. Shady Grove Hospital*, 128 Md. App. 163. With regard to mental health records, health care providers are authorized to maintain personal notes as necessary and appropriate. If a party initiates a medical malpractice or intentional tort against a health care provider, personal notes in the party's medical records are discoverable and admissible as evidence in the legal proceeding.

SB 371 establishes restrictions on the portion of medical records that relate to psychological tests. With certain exceptions, if disclosure would compromise the validity of the test, a mental health care provider is prohibited from disclosing that portion of the medical record to anyone, including the test subject. Raw test data relating to psychological tests may be discoverable or admissible as evidence if the hearing officer or court decides that the expert witness is appropriately qualified to interpret the raw test data. The subject of a psychological test is authorized to designate a licensed psychologist or psychiatrist for disclosure of the subject's medical record. Health care providers are authorized to disclose information on psychological tests under limited circumstances. However, access to or disclosure of a medical record that is also an education record under federal law is not affected by the bill's confidentiality provisions. An interested party is authorized to obtain mental health evaluations that relate to obtaining or continuing employment in connection with a civil action or a complaint under the aegis of the U.S. Equal Opportunity Commission or on written authorization of the employer or prospective employer.

A health care provider or any other person may be liable for punitive damages if the person knowingly and willfully requests or obtains a medical record under false pretenses or discloses with intent to use or transfer the information for commercial gain or malicious harm. A person is subject to punitive damages for knowingly or willfully disclosing a medical record with intent to transfer or use the health information for commercial gain or malicious harm.

Senate Bill 371 also creates a State Advisory Council on Medical Privacy and Confidentiality. The commission consists of 25 voting members from the legislature, state agencies, health care provider groups, patient advocate groups, medical record groups, labor, social work, the legal profession, and the information technology industry.

The State Advisory Council on Medical Privacy and Confidentiality is required to provide advice on confidentiality issues, monitor federal law developments and regulations, study the electronic transmission of data, study emerging best practices to secure patient confidentiality and make recommendations to the General assembly on medical records confidentiality. On or before December 15 of each year, an annual report must be submitted to the Governor and the General Assembly.

Senate Bill 371 amends the Courts and Judicial Proceedings Article to make its disclosure provisions consistent with the provisions on disclosure for a legal proceeding as provided in the Health-General Article.

Senate Bill 371 is effective July 1, 2000.

BACKGROUND:

Under current law, Maryland broadly defines medical records to include any oral, written, or other transmission in any form or medium that: 1) is entered into the patient's record, 2) can be readily associated with the patient, and 3) relates to the health care of the patient. Generally, Maryland is regarded as a national leader in the area of protecting medical record confidentiality by health privacy advocates. In the last decade, the General Assembly has established a general requirement for medical records confidentiality. The General Assembly has established standards for authorized disclosure and limited exemptions for disclosure of mental health records.

Criminal penalties for wrongful disclosure also exist under current law. The State and its agencies were made subject to disclosure penalties in 1997. The largest exemption for disclosure relates to potential claims against a provider. If a patient or interested party is involved in legal action against a health care provider, medical records may be disclosed to the health provider's insurer or legal counsel to dispose of the claim only. A general prohibition on the use or disclosure of genetic information without the prior written authorization of the person tested has also been enacted by the General Assembly.

Senate Bill 371 is the product of the Confidentiality of Medical Records Workgroup. The group's purpose was to continue to strengthen the comprehensive existing law on medical records confidentiality. The federal Health Insurance Portability and Accountability Act of 1996 (HIPAA) contained a provision that required Congress to pass medical records privacy legislation by August 21, 1999, but legislation was not passed. HIPAA alternatively required the Department of Health and Human Services (HHS) to issue regulations on confidentiality of medical records by February 21, 2000. The Confidentiality of Medical Records Workgroup sponsored this legislation in anticipation that federal action, when it does occur, will not preempt state law, but instead, establish a "federal floor" and allow states to maintain existing law with stronger standards than the federal law.

Senate Bill 371 passed the Senate with amendments (47-0). The Senate amendments were largely technical. Substantive changes included removing a notification provision from the bill and establishes that patient notification after the sale of a practice or facility be examined by the Advisory Council, narrowing the definition of a personal note, and adding additional members to the Advisory Council.

Appendix E (5)
SB 371 - Amendments - Third Read

BY: Environmental Matters Committee

AMENDMENTS TO SENATE BILL NO. 371
(Third Reading File Bill)

AMENDMENT NO. 1

On page 1, strike beginning with "providing" in line 13 down through "Act;" in line 14.

On page 2, in line 3, after "4-302.1," insert "and"; in the same line, strike ", and 4-309(g)"; in line 16, strike "and 4-309(e) and (f)".

AMENDMENT NO. 2

On pages 6 and 7, strike in their entirety the lines beginning with line 25 on page 6 through line 16 on page 7, inclusive.

Appendix E (6)
SB 371 - Floor Report - Bill Summary

FLOOR REPORT

SENATE BILL 371

Medical Records - Confidentiality

BILL SUMMARY

As amended, Senate Bill 371. The bill specifically:

- Prohibits the sale, rental, or barter of a medical record;
- Requires payors that accept claims from electronic claims clearinghouses to only accept the claims from clearinghouses accredited by the Electronic Healthcare Network Accreditation Commission or certified by the Maryland Health Care Commission;
- Restricts portions of medical records relating to psychological testing;
- Authorizes the use of "personal notes" that will grant patient and mental health providers more privacy, while protecting a third party payor's right to analyze the treatment plans and diagnosis for payment authentication purposes;
- Amends the Courts and Judicial Proceedings Article to make disclosure provisions consistent with legal proceeding disclosure as in the Health - General Article; and
- Creates a 29-member State Advisory Council on Medical Privacy and Confidentiality staffed by DHMH to provide advice on confidentiality issues, monitor federal law, study emerging best practices, and report annually to the Governor and General Assembly.

Senate Bill 371 is effective July 1, 2000.

BILL RATIONALE

Senate Bill 371 is the product of the Confidentiality of Medical Records Workgroup. The bill strengthens Maryland's law regarding medical records confidentiality and creates a State Advisory Council to provide guidance on confidentiality issues, monitor federal law, and study emerging best practices.

AMENDMENT SUMMARY AND RATIONALE

Amendment No. 1

Makes technical changes to the purpose and function paragraphs.

Amendment No. 2

Deletes the provisions of the bill authorizing punitive damages.

QUESTIONS

Q. Why was the punitive damages provision removed?

A. There are already sufficient criminal penalties under current law.

Q. What penalties are in current law regarding medical records?

A. Anyone who knowingly and willfully requests or obtains a medical record under false pretenses or discloses a medical record is guilty of a *misdemeanor* and on conviction is subject to:

- a fine up to $50,000, one year imprisonment, or both;
- if the offense is committed under false pretenses, a fine up to $100,000, 5 years imprisonment, or both; or
- if the offense is committed with the intent to sell, transfer, or use individually identifiable health information for commercial gain, a fine up to $250,000, 10 years imprisonment, or both.

Q. Are there any exceptions to this bill?

A. Yes. The bill includes an exemption regarding the sale, rental, or barter of a medical record for the transfer of medical records due to a change in ownership of a health care practice.

Q. What constitutes a medical record?

A. Maryland broadly defines medical records to include any oral, written, or other transmission in any form or medium that is entered into the patient's record, can be readily associated with the patient, and relates to the health care of the patient.

Q. What confidentiality provisions are in current law?

A. Generally, Maryland is regarded as a national leader in the area of protecting medical record confidentiality by health privacy advocates. Current law includes standards for authorized disclosure and limited exemptions for disclosure of mental health records. Criminal penalties for wrongful disclosure also exist under current law. If a patient or interested party is involved in legal action against a health care provider, medical records may be disclosed to the health provider's insurer or legal counsel to dispose of the claim only. Current law also includes a general prohibition on the use or disclosure of genetic information without the prior written authorization of the person tested.

Q. How will this bill affect mental health records?

A. With regard to mental health records, health care providers are authorized to maintain personal notes as necessary and appropriate. If a party initiates a medical malpractice or intentional tort against a health care provider, personal notes in the party's medical records are discoverable and admissible as evidence in the legal proceeding.

Q. Who will serve on the State Advisory Council on Medical Privacy and Confidentiality?

A. The Council consists of 25 voting members from the legislature, state agencies, health care provider groups, patient advocate groups, medical record groups, labor, social work, the legal profession and the information technology industry.

Q. What are the terms of membership for the Council?

A. Members serve staggered four year terms. The Governor is required to appoint a chairman for a two-year term. The Governor is authorized to remove a member for incompetence or misconduct. The Secretary of Health and Mental Hygiene must designate staff for the council.

Q. Who introduced this legislation?

A. This bill is the work product of a four-month interim subcommittee on the confidentiality of medical records. The committee reviewed current law and worked with national privacy experts, health care analysts, Assistant Attorney's General, consumers, data security experts, and advocates from the health care and insurance industries.

Q. What is the fiscal impact of this bill?

A. Special fund expenditures increase by $41,400 in FY 2001 for one staff position within the Maryland Health Care Commission.

Q. Could Maryland law be preempted by federal action?

A. The Confidentiality Workgroup sponsored this legislation in anticipation that federal action, if it does occur, will not preempt state law, but will allow states to maintain existing law with stronger standards than the federal law.

Q. Who supported this legislation?

A. The bill is supported by all interested parties and stakeholders that participated in the ad-hoc subcommittee. The following entities testified or supported written testimony in support of the bill:

Department of Health and Mental Hygiene
Maryland Health Care Commission
State Board of Pharmacy
Maryland State Police
MedChi
American Academy of Pediatrics
Maryland Psychological Association
Maryland Legislative Counsel of Social Workers
League of Life and Health Insurers
Rite Aid Corporation
AIDS Legislative Committee
Maryland Hospital Association (with adopted amendments)

I. MEDICAL RECORDS PRIVACY

A. CONFIDENTIALITY WORKGROUP

1. National Privacy Experts
2. Health Care Analysts
3. Asst. Attorneys General
4. Data Security Experts
5. Advocates from all sectors of health care and insurance industries

B. STRENGTHENS EXISTING LAW

1. Prevents sale, rental, barter of medical records (exempts transfer due to change in ownership of health care facility)

2. Mandates electronic claims must be from accredited clearinghouses certified by State Health Care Commission

3. Restricts portions of medical records relating to psychological tests

4. Authorizes use of "personal notes" while protecting 3rd party payor's rights to analyze treatment plans

5. Allows mental health evaluations to be obtained when relating to a civil action or Equal Opportunity Comm.

6. Amends Courts and Judicial Proceedings Article to make disclosure provisions consistent with legal proceeding disclosure as in Health General Article

7. Effective July 1, 2000

8. Creates State Advisory Council on Medical Privacy and Confidentiality

HOUSE REMOVED PUNITIVE DAMAGES

2000 Regular Session bill information current as of December 19, 2000 - 2:08 a.m.

SENATE BILL 371

CHAPTER NUMBER: 270
File Code: Public Health

Sponsored By:

Senator Hollinger (Chairman, Health Subcommittee) and Senators Conway, Harris, Pinsky, and Sfikas

Entitled:

Medical Records - Confidentiality

Synopsis:

Prohibiting the disclosure by sale, rental, or barter of medical records; exempting from the prohibition medical records that relate to the transfer of ownership of a health care practice or facility; requiring payors that accept claims from medical care electronic claims clearinghouses to accept only claims from accredited or certified medical care electronic claims clearinghouses; establishing the State Advisory Council on Medical Privacy and Confidentiality to examine confidentiality issues; etc.

History by Legislative Date

Senate Action

2/3
First Reading Economic and Environmental Affairs
2/16
Hearing 3/1 at 1:00 p.m.
3/8
Favorable with Amendments Report by Economic and Environmental Affairs
3/9
Favorable with Amendments Report Adopted
Second Reading Passed with Amendments
3/13
Third Reading Passed (47-0)
4/10
Senate Concur - House Amendments
Third Reading Passed (45-0)
Passed Enrolled
5/11
Signed by the Governor Chapter 270

House Action

3/14
First Reading Environmental Matters
3/15
Hearing 3/23 at 1:00 p.m.
4/5
Favorable with Amendments Report by Environmental Matters
4/1
Favorable with Amendments Report Adopted
Second Reading Passed with Amendments
4/2
Special Order 4/7 (Delegate Hammen) Adopted
4/3
Special Order 4/8 (Delegate Hammen) Adopted
4/5
Special Order 4/10 (Delegate Hammen) Adopted
4/8
Third Reading Passed with Amendments (130-1)

Sponsored by:

Senator Paula C. Hollinger, District 11
Senator Joan Carter Conway, District 43
Senator Andrew P. Harris, District 9
Senator Paul G. Pinsky, District 22
Senator Perry Sfikas, District 46

Bill indexed under the following Subjects:

COMMITTEES AND COMMISSIONS -see also- POLITICAL COMMITTEES
DAMAGES
DISCLOSURE
ELECTRONIC TRANSMISSION
HEALTH INSURANCE -see also- HMOS; MANAGED CARE ORGANIZATIONS
HEALTH OCCUPATIONS -see also specific health occupations-
MENTAL HEALTH
NOTICES
PATIENTS
PRIVACY
PSYCHIATRISTS
PSYCHOLOGISTS
RECORDS -see also- LAND RECORDS; VITAL RECORDS
REPORTS
RULES AND REGULATIONS

Bill affects the following Statutes:

Courts and Judicial Proceedings
(*9-109* , *9-109.1* , *9-121*)

Health - General
(*4-302* , *4-302* , *4-302.1* , *4-306* , *4-307* , *4-307* , *4-307* , *4-307* , *4-3A-01* , *4-3A-02* , *4-3A-03* , *4-3A-04* , *4-3A-05*)

Documents:

Bill Text (Displayed in Rich Text Format): First Reading, Third Reading, Enrolled

Fiscal Note (Displayed in WordPerfect 8 Format): Available

Amendments (Displayed in WordPerfect 8 Format):

Senate

Number: 634630/01 Offered on: March 9, 2000 at: 10:36 a.m. Status: Adopted

House

Number: 150517/01 Offered on: April 5, 2000 at: 10:50 a.m. Status: Adopted

Roll Call Votes (Legislative dates are shown):

Senate

March 13, 2000: Third Reading Passed (47-0)
April 10, 2000: Third Reading Passed (45-0)

House

April 8, 2000: Third Reading Passed (130-1)

Appendix E (7)
SB 371 - History by Legislative Date

Appendix E (8)
SB 371 - Enrolled Bill

J1

SENATE BILL 371

(0lr1036)

ENROLLED BILL

— Economic and Environmental Affairs/Environmental Matters —

Introduced by **Senator Hollinger (Chairman, Health Subcommittee) and Senators Conway, Harris, Pinsky, and Sfikas**

Read and Examined by Proofreaders:

_____
Proofreader.

_____
Proofreader.

Sealed with the Great Seal and presented to the Governor, for his approval this _____ day of _____ at _____ o'clock, _____M.

_____
President.

CHAPTER_____

AN ACT concerning

Medical Records – Confidentiality

FOR the purpose of prohibiting the disclosure by sale, rental, or barter of certain medical records; exempting certain medical records from the prohibition; requiring certain payors to accept claims only from certain medical care electronic claims clearinghouses; creating additional limitations on the disclosure of certain records; exempting certain notes from the definition of medical records; authorizing mental health providers to maintain certain notes in specified situations; providing that a personal note is a medical record if disclosed in a certain manner; requiring mental health providers to withhold certain portions of the medical record and abide by certain requirements; authorizing certain persons to release or obtain certain records under certain circumstances; ~~providing for punitive damages when a person knowingly and willfully violates the provisions of this Act;~~ establishing an Advisory Council on Medical Privacy and Confidentiality to examine confidentiality issues; providing for the membership and terms of the Advisory Council; establishing the duties of

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.
[Brackets] indicate matter deleted from existing law.
Underlining indicates amendments to bill.
~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.
Italics indicate opposite chamber/conference committee amendments.

the Advisory Council; requiring the Advisory Council to annually submit a report to the Governor and General Assembly; defining certain terms; and generally relating to the confidentiality of medical records.

BY renumbering
Article – Health – General
Section 4–302(e) and 4–307(d) through (h), respectively
to be Section 4–302(g) and 4–307(g) through (k), respectively
Annotated Code of Maryland
(1994 Replacement Volume and 1999 Supplement)

BY adding to
Article – Health – General
Section 4–302(e) ~~and (f)~~, 4–302.1, *and* 4–307(d) through (f)~~, and 4–309(g)~~; and 4–3A–01 through 4–3A–05, inclusive, to be under the new subtitle "Subtitle 3A. State Advisory Council on Medical Privacy and Confidentiality"
Annotated Code of Maryland
(1994 Replacement Volume and 1999 Supplement)

BY repealing and reenacting, with amendments,
Article – Health – General
Section 4–306(b)(7) and 4–307(a)
Annotated Code of Maryland
(1994 Replacement Volume and 1999 Supplement)

BY repealing and reenacting, without amendments,
Article – Health – General
Section 4–307(b) and (c) ~~and 4–309(e) and (f)~~
Annotated Code of Maryland
(1994 Replacement Volume and 1999 Supplement)

BY repealing and reenacting, with amendments,
Article – Courts and Judicial Proceedings
Section 9–109(b), 9–109.1(b), and 9–121(b)
Annotated Code of Maryland
(1998 Replacement Volume and 1999 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That Section(s) 4–302(e) and 4–307(d) through (h), respectively, of the Health – General Article of the Annotated Code of Maryland be renumbered to be Section(s) 4–302(g) and 4–307(g) through (k), respectively.

SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland read as follows:

Article – Health – General

4–302.

(E) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, A PERSON MAY NOT DISCLOSE BY SALE, RENTAL, OR BARTER ANY MEDICAL RECORD.

(2) THIS SUBSECTION SHALL NOT PROHIBIT THE TRANSFERS OF MEDICAL RECORDS RELATING TO THE TRANSFER OF OWNERSHIP OF A HEALTH CARE PRACTICE OR FACILITY IF THE TRANSFER IS IN ACCORD WITH THE ETHICAL GUIDELINES OF THE APPLICABLE HEALTH CARE PROFESSION OR PROFESSIONS.

~~(F) (1) IF A MEDICAL RECORD IS TRANSFERRED UNDER SUBSECTION (E)(2) OF THIS SECTION, THE PROVIDER WHO MAINTAINS THE RECORDS SHALL NOTIFY THE PATIENT OR PERSON IN INTEREST.~~

~~(2) THE NOTICE UNDER THIS SUBSECTION SHALL:~~

~~(I) BE MADE BY FIRST–CLASS MAIL TO THE LAST KNOWN ADDRESS OF THE PATIENT OR PERSON IN INTEREST WITHIN 30 DAYS OF THE TRANSFER OF OWNERSHIP OF THE HEALTH CARE PRACTICE; AND~~

~~(II) INCLUDE A DESIGNATED LOCATION FROM WHICH THE MEDICAL RECORD MAY BE RETRIEVED, IF WANTED.~~

~~4–302.1.~~

(A) PAYORS THAT ACCEPT CLAIMS ORIGINATING IN THIS STATE FROM MEDICAL CARE ELECTRONIC CLAIMS CLEARINGHOUSES SHALL ACCEPT CLAIMS ONLY FROM MEDICAL CARE ELECTRONIC CLAIMS CLEARINGHOUSES THAT ARE:

(1) ACCREDITED BY THE ELECTRONIC HEALTHCARE NETWORK ACCREDITATION COMMISSION; OR

(2) CERTIFIED BY THE ~~STATE~~ MARYLAND HEALTH CARE COMMISSION.

(B) THE ~~STATE~~ MARYLAND HEALTH CARE COMMISSION SHALL ADOPT REGULATIONS TO CARRY OUT THIS SUBSECTION.

4–306.

(b) A health care provider shall disclose a medical record without the authorization of a person in interest:

(7) [To] SUBJECT TO THE ADDITIONAL LIMITATIONS FOR A MEDICAL RECORD DEVELOPED PRIMARILY IN CONNECTION WITH THE PROVISION OF MENTAL HEALTH SERVICES IN § 4–307 OF THIS SUBTITLE, TO grand juries, prosecution agencies, law enforcement agencies or their agents or employees to further an investigation or prosecution, pursuant to a subpoena, warrant, or court order for the sole purposes of investigating and prosecuting criminal activity, provided that the

prosecution agencies and law enforcement agencies have written procedures to protect the confidentiality of the records;

4–307.

(a) (1) In this section the following words have the meanings indicated.

(2) "Case management" means an individualized recipient centered service designed to assist a recipient in obtaining effective mental health services through the assessing, planning, coordinating, and monitoring of services on behalf of the recipient.

(3) "Core service agency" means an organization approved by the Mental Hygiene Administration to manage mental health resources and services in a designated area or to a designated target population.

(4) "Director" means the Director of the Mental Hygiene Administration or the designee of the Director.

(5) "Mental health director" means the health care professional who performs the functions of a clinical director or the designee of that person in a health care, detention, or correctional facility.

(6) (I) "PERSONAL NOTE" MEANS INFORMATION THAT IS:

1. THE WORK PRODUCT AND PERSONAL PROPERTY OF A MENTAL HEALTH PROVIDER; AND

2. EXCEPT AS PROVIDED IN SUBSECTION (D)(3) OF THIS SECTION, NOT DISCOVERABLE OR ADMISSIBLE AS EVIDENCE IN ANY CRIMINAL, CIVIL, OR ADMINISTRATIVE ACTION.

(II) EXCEPT AS PROVIDED IN SUBSECTION (D)(2) OF THIS SECTION, A MEDICAL RECORD DOES NOT INCLUDE A PERSONAL NOTE OF A MENTAL HEALTH CARE PROVIDER, IF THE MENTAL HEALTH CARE PROVIDER:

1. KEEPS THE PERSONAL NOTE IN THE MENTAL HEALTH CARE PROVIDER'S SOLE POSSESSION FOR THE PROVIDER'S OWN PERSONAL USE;

2. MAINTAINS THE PERSONAL NOTE SEPARATE FROM THE RECIPIENT'S MEDICAL RECORDS; AND

3. DOES NOT DISCLOSE THE PERSONAL NOTE TO ANY OTHER PERSON EXCEPT:

A. THE MENTAL HEALTH PROVIDER'S SUPERVISING HEALTH CARE PROVIDER THAT MAINTAINS THE CONFIDENTIALITY OF THE PERSONAL NOTE;

B. A CONSULTING HEALTH CARE PROVIDER THAT MAINTAINS THE CONFIDENTIALITY OF THE PERSONAL NOTE; OR

C. AN ATTORNEY OF THE HEALTH CARE PROVIDER THAT MAINTAINS THE CONFIDENTIALITY OF THE PERSONAL NOTE.

(III) "PERSONAL NOTE" DOES NOT INCLUDE INFORMATION CONCERNING THE PATIENT'S DIAGNOSIS, TREATMENT PLAN, SYMPTOMS, PROGNOSIS, OR PROGRESS NOTES.

(b) The disclosure of a medical record developed in connection with the provision of mental health services shall be governed by the provisions of this section in addition to the other provisions of this subtitle.

(c) When a medical record developed in connection with the provision of mental health services is disclosed without the authorization of a person in interest, only the information in the record relevant to the purpose for which disclosure is sought may be released.

(D) (1) TO THE EXTENT A MENTAL HEALTH CARE PROVIDER DETERMINES IT NECESSARY AND APPROPRIATE, THE MENTAL HEALTH CARE PROVIDER MAY MAINTAIN A PERSONAL NOTE REGARDING A RECIPIENT.

(2) A PERSONAL NOTE SHALL BE CONSIDERED PART OF A RECIPIENT'S MEDICAL RECORDS IF, AT ANY TIME, A MENTAL HEALTH CARE PROVIDER DISCLOSES A PERSONAL NOTE TO:

~~(I)~~ A PERSON OTHER THAN:

(I) THE PROVIDER'S SUPERVISING HEALTH CARE PROVIDER;

(II) A CONSULTING HEALTH CARE PROVIDER;

(III) AN ATTORNEY OF THE HEALTH CARE PROVIDER; OR

(IV) A RECIPIENT UNDER PARAGRAPH (3) OF THIS SUBSECTION.

(3) THE PROVISIONS OF THIS SUBSECTION DO NOT PROHIBIT THE DISCLOSURE, DISCOVERY, OR ADMISSIBILITY OF A PERSONAL NOTE REGARDING A RECIPIENT WHO HAS INITIATED AN ACTION FOR MALPRACTICE, AN INTENTIONAL TORT, OR PROFESSIONAL NEGLIGENCE AGAINST THE HEALTH CARE PROVIDER.

(E) (1) EXCEPT AS OTHERWISE PROVIDED IN PARAGRAPHS (3), (4), AND (5) OF THIS SUBSECTION, IF THE DISCLOSURE OF A PORTION OF A MEDICAL RECORD RELATING TO A PSYCHOLOGICAL TEST WOULD COMPROMISE THE OBJECTIVITY OR FAIRNESS OF THE TEST OR THE TESTING PROCESS, A MENTAL HEALTH CARE PROVIDER MAY NOT DISCLOSE THAT PORTION OF THE MEDICAL RECORD TO ANY PERSON, INCLUDING A SUBJECT OF THE TEST.

(2) THE RAW TEST DATA RELATING TO A PSYCHOLOGICAL TEST IS ONLY DISCOVERABLE OR ADMISSIBLE AS EVIDENCE IN A CRIMINAL, CIVIL, OR ADMINISTRATIVE ACTION ON THE DETERMINATION BY THE COURT OR ADMINISTRATIVE HEARING OFFICER THAT THE EXPERT WITNESS FOR THE PARTY

SEEKING THE RAW TEST DATA IS QUALIFIED BY THE APPROPRIATE TRAINING, EDUCATION, OR EXPERIENCE TO INTERPRET THE RESULTS OF THAT PORTION OF THE RAW TEST DATA RELATING TO THE PSYCHOLOGICAL TEST.

(3) (I) A RECIPIENT WHO HAS BEEN THE SUBJECT OF A PSYCHOLOGICAL TEST MAY DESIGNATE A PSYCHOLOGIST LICENSED UNDER TITLE 18 OF THE HEALTH OCCUPATIONS ARTICLE OR A PSYCHIATRIST LICENSED UNDER TITLE 14 OF THE HEALTH OCCUPATIONS ARTICLE TO WHOM A HEALTH CARE PROVIDER MAY DISCLOSE THE MEDICAL RECORD.

(II) THE RECIPIENT SHALL:

1. REQUEST THE DISCLOSURE AUTHORIZED UNDER THIS PARAGRAPH IN WRITING; AND

2. COMPLY WITH THE PROVISIONS OF § 4–304 OF THIS SUBTITLE.

(4) A HEALTH CARE PROVIDER MAY DISCLOSE A MEDICAL RECORD RELATING TO A PSYCHOLOGICAL TEST AS PROVIDED UNDER § 4–305(B)(2)(I) OF THIS SUBTITLE.

(5) THE PROVISIONS OF THIS SUBSECTION MAY NOT RESTRICT ACCESS TO OR AFFECT THE DISCLOSURE OF A MEDICAL RECORD WHICH IS ALSO AN EDUCATION RECORD UNDER THE FEDERAL INDIVIDUALS WITH DISABILITIES EDUCATION ACT, THE FEDERAL FAMILY EDUCATION RIGHTS AND PRIVACY ACT, OR ANY FEDERAL AND STATE REGULATIONS THAT HAVE BEEN ADOPTED TO IMPLEMENT THOSE LAWS.

(F) NOTWITHSTANDING ANY OTHER PROVISION OF THIS SUBTITLE, A PERSON IN INTEREST SHALL HAVE THE RIGHT TO OBTAIN A MEDICAL RECORD OF A RECIPIENT THAT IS DEVELOPED IN CONJUNCTION WITH A MENTAL HEALTH EVALUATION RELATING TO OBTAINING OR CONTINUING EMPLOYMENT, IF THE EVALUATION HAS BEEN PERFORMED AT THE REQUEST OF OR ON BEHALF OF AN EMPLOYER OR PROSPECTIVE EMPLOYER:

(1) IN CONNECTION WITH A CIVIL ACTION OR U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION COMPLAINT INITIATED BY THE PERSON IN INTEREST; OR

(2) ON A WRITTEN AUTHORIZATION OF THE EMPLOYER OR PROSPECTIVE EMPLOYER.

~~4–309.~~

~~(c) (1) A health care provider or any other person, including an officer or employee of a governmental unit, who knowingly and willfully requests or obtains a medical record under false pretenses or through deception or knowingly and willfully discloses a medical record in violation of this subtitle is guilty of a misdemeanor and on conviction is subject to the following penalties:~~

~~(i) A fine not exceeding $50,000, imprisonment for not more than 1 year, or both;~~

~~(ii) If the offense is committed under false pretenses, a fine not exceeding $100,000, imprisonment for not more than 5 years, or both; and~~

~~(iii) If the offense is committed with intent to sell, transfer, or use individually identifiable health information for commercial advantage, personal gain, or malicious harm, a fine not exceeding $250,000, imprisonment for not more than 10 years, or both.~~

~~(2) This subsection does not apply to an officer or employee of a governmental unit that is conducting a criminal investigation.~~

~~(f) A health care provider or any other person who knowingly violates any provision of this subtitle is liable for actual damages.~~

~~(G) A HEALTH CARE PROVIDER OR ANY OTHER PERSON, INCLUDING AN OFFICER OR EMPLOYEE OF A LOCAL GOVERNMENT UNDER § 5-303 OF THE COURTS ARTICLE OR STATE PERSONNEL UNDER § 5-522 OF THE COURTS ARTICLE, MAY BE LIABLE FOR PUNITIVE DAMAGES IF THE PERSON:~~

~~(1) KNOWINGLY AND WILLFULLY REQUESTS OR OBTAINS A MEDICAL RECORD UNDER FALSE PRETENSES OR THROUGH DECEPTION WITH INTENT TO SELL, TRANSFER, OR USE INDIVIDUALLY IDENTIFIABLE HEALTH INFORMATION FOR COMMERCIAL ADVANTAGE, PERSONAL GAIN, OR MALICIOUS HARM; OR~~

~~(2) KNOWINGLY AND WILLFULLY DISCLOSES A MEDICAL RECORD IN VIOLATION OF THIS SUBTITLE WITH INTENT TO SELL, TRANSFER, OR USE INDIVIDUALLY IDENTIFIABLE HEALTH INFORMATION FOR COMMERCIAL ADVANTAGE, PERSONAL GAIN, OR MALICIOUS HARM.~~

SUBTITLE 3A. STATE ADVISORY COUNCIL ON MEDICAL PRIVACY AND CONFIDENTIALITY.

~~4-~~3A-01.

THERE IS A STATE ADVISORY COUNCIL ON MEDICAL PRIVACY AND CONFIDENTIALITY.

~~4-~~3A-02.

(A) IN THIS SUBTITLE, "ADVISORY COUNCIL" MEANS THE STATE ADVISORY COUNCIL ON MEDICAL PRIVACY AND CONFIDENTIALITY.

(B) (1) THE ADVISORY COUNCIL CONSISTS OF ~~25~~ 29 MEMBERS.

(2) THE ADVISORY COUNCIL SHALL CONSIST OF ~~25~~ 29 VOTING MEMBERS APPOINTED BY THE GOVERNOR.

(3) OF THE ~~25~~ 29 VOTING MEMBERS:

(I) ONE SHALL BE THE SECRETARY OF HEALTH AND MENTAL HYGIENE OR THE SECRETARY'S DESIGNEE;

(II) ~~TWO~~ THREE SHALL BE LICENSED PHYSICIANS, INCLUDING:

1. ONE BOARD CERTIFIED PEDIATRICIAN WITH EXPERTISE IN THE CONFIDENTIALITY OF CHILDREN'S MEDICAL RECORDS; AND

2. ONE LICENSED PSYCHIATRIST;

(III) ONE SHALL BE A LICENSED DENTIST;

(IV) ONE SHALL BE A REPRESENTATIVE OF THE HEALTH INSURANCE INDUSTRY;

(V) ONE SHALL BE A REPRESENTATIVE OF THE HOSPITAL INDUSTRY;

(VI) ONE SHALL BE A REPRESENTATIVE OF A MEDICAL INSTITUTION THAT IS ENGAGED IN MEDICAL RESEARCH;

(VII) THREE SHALL BE CONSUMER MEMBERS, INCLUDING ONE FROM THE MARYLAND PATIENT ADVOCACY GROUP;

(VIII) ONE SHALL BE A REPRESENTATIVE OF AN INTEREST GROUP THAT IS INTERESTED IN MEDICAL CONFIDENTIALITY;

(IX) ONE SHALL BE A REPRESENTATIVE FROM THE MENTAL HEALTH ASSOCIATION;

(X) ONE SHALL BE A LICENSED NURSE;

(XI) ONE SHALL BE A REPRESENTATIVE OF A STATE HEALTH CARE REGULATORY COMMISSION THAT IS INVOLVED IN THE COLLECTION OF DATA;

(XII) ONE SHALL BE A MEDICAL ETHICIST;

(XIII) ONE SHALL BE A COMPUTER SECURITY AND ENCRYPTION EXPERT;

(XIV) ONE SHALL BE A MEMBER OF THE MARYLAND PLAINTIFF'S BAR ASSOCIATION;

(XV) ONE SHALL BE A MEMBER OF THE MARYLAND DEFENSE BAR ASSOCIATION;

(XVI) ONE SHALL BE A REPRESENTATIVE OF THE DEPARTMENT OF HEALTH AND MENTAL HYGIENE WITH SPECIFIC KNOWLEDGE OF STATE AND

FEDERAL REGULATIONS ON CONFIDENTIALITY RELATIVE TO MENTAL HEALTH TREATMENT;

(XVII) ONE SHALL BE A REPRESENTATIVE OF ORGANIZED LABOR;

(XVIII) ONE SHALL BE A MEDICAL RECORDS PROFESSIONAL;

(XIX) ONE SHALL BE A REPRESENTATIVE FROM THE ASSOCIATION OF CHAIN DRUGSTORES;

(XX) ONE SHALL BE A LICENSED PSYCHOLOGIST;

(XXI) ONE SHALL BE A REPRESENTATIVE OF THE LIFE INSURANCE INDUSTRY;

(XXII) ONE SHALL BE A LICENSED PHARMACIST;

(XXIII) ONE SHALL BE A LICENSED CLINICAL SOCIAL WORKER;

~~(XXI)~~ (XXIV) ONE SHALL BE A MEMBER OF THE SENATE OF MARYLAND; AND

~~(XXII)~~ (XXV) ONE SHALL BE A MEMBER OF THE MARYLAND HOUSE OF DELEGATES.

(C) (1) THE TERM OF A VOTING MEMBER IS 4 YEARS.

(2) THE TERMS OF MEMBERS ARE STAGGERED AS REQUIRED BY THE TERMS PROVIDED FOR MEMBERS OF THE ADVISORY COUNCIL.

(3) AT THE END OF A TERM, A MEMBER CONTINUES TO SERVE UNTIL A SUCCESSOR IS APPOINTED AND QUALIFIES.

(4) A MEMBER WHO IS APPOINTED AFTER A TERM HAS BEGUN SERVES ONLY FOR THE REST OF THE TERM AND UNTIL A SUCCESSOR IS APPOINTED AND QUALIFIES.

(D) THE GOVERNOR MAY REMOVE A MEMBER FOR INCOMPETENCE OR MISCONDUCT.

4–3A–03.

FROM AMONG THE MEMBERS OF THE ADVISORY COUNCIL, THE GOVERNOR SHALL APPOINT A CHAIRMAN FOR A 2–YEAR TERM.

4–3A–04.

(A) A MAJORITY OF THE MEMBERS SERVING ON THE ADVISORY COUNCIL IS A QUORUM.

(B) THE ADVISORY COUNCIL SHALL DETERMINE THE TIMES AND PLACES OF ITS MEETINGS.

(C) A MEMBER OF THE ADVISORY COUNCIL:

(1) MAY NOT RECEIVE COMPENSATION; BUT

(2) IS ENTITLED TO REIMBURSEMENT FOR EXPENSES UNDER THE STANDARD STATE TRAVEL REGULATIONS, AS PROVIDED IN THE STATE BUDGET.

(D) THE SECRETARY OF HEALTH AND MENTAL HYGIENE SHALL DESIGNATE THE STAFF NECESSARY TO CARRY OUT THIS SUBTITLE.

4–3A–05.

(A) THE ADVISORY COUNCIL SHALL:

(1) ADVISE THE GENERAL ASSEMBLY OF EMERGING ISSUES IN THE CONFIDENTIALITY OF MEDICAL RECORDS;

(2) CONDUCT HEARINGS;

(3) MONITOR DEVELOPMENTS IN FEDERAL LAW AND REGULATIONS REGARDING:

(I) CONFIDENTIALITY OF MEDICAL RECORDS;

(II) HEALTH CARE INFORMATION TECHNOLOGY;

(III) TELEMEDICINE; AND

(IV) PROVIDER AND PATIENT COMMUNICATION;

(4) FACILITATE DISSEMINATION OF INFORMATION ON, AND COMPLIANCE WITH, FEDERAL STANDARDS FOR PRIVACY OF INDIVIDUALLY IDENTIFIABLE HEALTH INFORMATION;

(5) STUDY THE ISSUE OF PATIENT OR PERSON IN INTEREST NOTIFICATION SUBSEQUENT TO:

(I) THE TRANSFER OF RECORDS RELATING TO THE TRANSFER OF OWNERSHIP OF A HEALTH CARE PRACTICE;

(II) THE DEATH, RETIREMENT, OR CHANGE IN EMPLOYMENT OF A HEALTH CARE PRACTITIONER; OR

(III) THE SALE, DISSOLUTION, OR BANKRUPTCY OF A CORPORATION WHICH HAS OWNERSHIP INTERESTS OR POSSESSION OF MEDICAL RECORDS;

(6) STUDY MEDICAL DATABASES AND THE ELECTRONIC TRANSMISSION OF DATA IN RELATION TO ITS IMPACT ON PATIENT CONFIDENTIALITY;

~~(5)~~ (7) STUDY EMERGING PROVIDER BEST PRACTICES FOR SUPPORTING PATIENT CONFIDENTIALITY;

~~(6)~~ (8) MAKE RECOMMENDATIONS TO THE GENERAL ASSEMBLY REGARDING THE CONFIDENTIALITY OF MEDICAL RECORDS; AND

~~(7)~~ (9) ON OR BEFORE DECEMBER 15 OF EACH YEAR, SHALL SUBMIT AN ANNUAL REPORT AND ITS RECOMMENDATIONS TO THE GOVERNOR, AND SUBJECT TO § 2–1246 OF THE STATE GOVERNMENT ARTICLE, TO THE GENERAL ASSEMBLY.

Article – Courts and Judicial Proceedings

9–109.

(b) Unless otherwise provided, in all judicial, legislative, or administrative proceedings, a patient or [his] THE PATIENT'S authorized representative has a privilege to refuse to disclose, and to prevent a witness from [disclosing, communications] DISCLOSING:

(1) COMMUNICATIONS relating to diagnosis or treatment of the [patient's mental or emotional disorder] PATIENT; OR

(2) ANY INFORMATION THAT BY ITS NATURE WOULD SHOW THE EXISTENCE OF A MEDICAL RECORD OF THE DIAGNOSIS OR TREATMENT.

9–109.1.

(b) Unless otherwise provided, in any judicial, legislative, or administrative proceeding, a client or a client's authorized representative has a privilege to refuse to disclose, and to prevent a witness from disclosing, communications relating [to diagnosis] TO:

(1) DIAGNOSIS or treatment of the [client's mental or emotional disorder] CLIENT; OR

(2) ANY INFORMATION THAT BY ITS NATURE WOULD SHOW A MEDICAL RECORD OF THE DIAGNOSIS OR TREATMENT EXISTS.

9–121.

(b) Unless otherwise provided, in all judicial or administrative proceedings, a client has a privilege to refuse to disclose, and to prevent a witness from disclosing, communications made while the client was receiving counseling OR ANY INFORMATION THAT BY ITS NATURE WOULD SHOW THAT SUCH COUNSELING OCCURRED.

SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 2000.